NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

PREAMBLE

1. **Sections Affected:** — **Rulemaking Action:**

R6-3-1402.	Repeal
R6-3-1405.	Amend
R6-3-1407.	Renumber
R6-3-1407.	Amend
R6-3-1408.	New Section
R6-3-1501.	Renumber
R6-3-1505.	Amend
R6-3-1708.	Repeal
R6-3-1708.	New Section
R6-3-1803.	Amend
R6-3-1804.	Repeal
R6-3-1805.	Repeal
R6-3-1806.	Repeal
R6-3-1806.	New Section
R6-3-1807.	Repeal
R6-3-1808.	Amend
R6-3-1809.	Repeal
R6-3-1809.	New Section
R6-3-5005.	Repeal
R6-3-5005.	New Section
R6-3-5040.	Amend
R6-3-5050.	Repeal
R6-3-50135.	Repeal
R6-3-50135.	New Section
R6-3-50305.	Repeal
R6-3-50345.	Amend
R6-3-50385.	Repeal
R6-3-50440.	Repeal
R6-3-50495.	Repeal
R6-3-50505.	Repeal
Article 51.	Amend
R6-3-51135.	Repeal
R6-3-51345.	Amend
R6-3-5240.	Repeal
R6-3-5240.	New Section
R6-3-5305.	Repeal
R6-3-5305.	New Section
R6-3-5340.	Repeal
R6-3-5440.	Repeal
R6-3-5495.	Amend
R6-3-54407.	Repeal
R6-3-5601.	New Section
R6-3-5602.	New Section
R6-3-5603.	New Section
R6-3-5604.	New Section

R6-3-5605.	Repeal
R6-3-5635.	Repeal
R6-3-56125.	Repeal
R6-3-56130.	Repeal
R6-3-56175.	Repeal
R6-3-56205.	Repeal
R6-3-56220.	Repeal
R6-3-56407.	Repeal
R6-3-56445.	Repeal
R6-3-56465.	Repeal
R6-3-56470.	Repeal

2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statutes: A.R.S. §§ 41-1954(A)(3) and 46-134(12)

   Implementing statutes: A.R.S. §§ 23-706, 23-727, 23-761 through 23-766, 23-771 through 23-777, 23-791, and 23-793

3. **The effective date of the rules:**

   July 22, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**

   Notice of Rulemaking Docket Opening: 2 A.A.R. 3371, July 12, 1996
   2 A.A.R. 4927, December 6, 1996

   Notice of Proposed Rulemaking: 3 A.A.R. 394, February 14, 1997

5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

   Name: Vista Thompson Brown

   Address: Department of Economic Security
   P. O. Box 6123, Site Code 837A
   Phoenix, Arizona 85005

   Telephone: (602) 542-6555

   Fax Number: (602) 542-6000

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   The Arizona Department of Economic Security operates the Unemployment Insurance (UI) program, authorized under Titles II and IX of the Social Security Act, the Federal Unemployment Tax Act, and A.R.S. Title 23, Chapter 4. The UI program, financed by a state and federal tax on employers, pays benefits for temporary periods to workers who are involuntarily unemployed. These rules govern the 3 major functions of the UI program: the collection of the unemployment tax, the payment of unemployment benefits, and an administrative appeal process.

   With the exception of a number of rules included in a 1995 rulemaking package, the rules were adopted or last amended in the late 1970s or early 1980s. The rules continue to have merit but they do not reflect the current format and style requirements. The rules are being amended to improve clarity, to eliminate gender-specific terminology, and to delete language which merely quotes or paraphrases statutory text. A number of rules are being repealed because they contain duplicative requirements or reflect internal procedure.

   In this rule package, the Department is also making the following changes:

   - adopting a rule to administer A.R.S. § 23-793, Qualified transient lodging employment, enacted in 1996;
   - renumbering the rule on interested parties and amending this rule to expand its application; and
   - amending rules affecting unemployment insurance benefit activities to better define "in training with the approval of the Department," "full-time student," "last employment," "good cause for refusing work," and "temporary-help agency."

7. **A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

8. **The summary of the economic, small business and consumer impact:**

   The rules will have a positive but intangible economic impact on small business and consumers. The rules are being updated to improve clarity and the underlying substantive requirements are unchanged. Any economic impact associated with the 1 new rule that is being adopted is attributable to the statute rather than the rule.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**

   Throughout these rules, nonsubstantive corrections were made to punctuation and grammar and to conform language to the Secretary of State's requirements.

R6-3-1408. Seasonal Employment Status; Qualified Transient Lodging Employment

After further review of the rule, the Department decided to make the following change to subsection (B)(4) for clarity:

4. A copy of the employer's written notice to employees that the employment is seasonal. ~~The employer's certification that the employer has met the provisions of A.R.S. 23-793(A)(3);~~

R6-3-5305. General; Definitions

Subsection (B) incorrectly referred to subsection (D). The Department has changed the subsection to read as follows:

B. Except as provided in subsection (C)(2) ~~(D)~~ and R6-3-53335, the offer of work shall be an offer from a new employer.

R6-3-5603. Eligibility During A Labor Dispute

After further review of the rule, the Department decided to make the following change to subsection (C) for clarity:

C. When a ~~A~~ worker who is a member of a grade or class of workers participating in, financing, or directly interested in a labor dispute ~~represented by a bargaining unit at the premises where the worker was last employed, who~~ did not go out on strike with the other members, but ~~who~~ subsequently became unemployed because the employer limits or stops work as the result of the strike, the worker is unemployed due to a labor dispute pursuant to A.R.S. § 23-777.

10. A summary of the principle comments and the agency response to them:
The Department did not receive any public comments.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules.
Not applicable.

12. Incorporations by reference and their locations in the rules:
Not applicable.

13. Was this rule previously adopted as an emergency rule?
Not applicable

14. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY UNEMPLOYMENT INSURANCE

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT

Section
R6-3-1402. ~~Mass separations~~ Repealed
R6-3-1405. Shared Work work
R6-3-1407 ~~R6-3-1501~~. Interested Parties
R6-3-1408. Seasonal Employment Status; Qualified Transient Lodging Employment

ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS

Section
R6-3-1505. Appeals Board Proceedings level proceedings

ARTICLE 17. CONTRIBUTIONS

Section
R6-3-1708. ~~Noncharges to experience rating accounts~~ Employer Charges

ARTICLE 18. BENEFITS

Section
R6-3-1803. Benefit Notice and Determination of Benefit Rights
R6-3-1804. ~~Payment of benefits to combined-wage claimants~~ Repealed
R6-3-1805. ~~Availability of students~~ Repealed
R6-3-1806. ~~Payment of benefits to Interstate Claimants~~ Interstate Claimants
R6-3-1807. ~~Payment of benefits for partial unemployment~~ Repealed
R6-3-1808. Payment on Account of Retirement ~~account of retirement~~
R6-3-1809. ~~Eligibility for approved training~~ Eligibility for Approved Training

ARTICLE 50. VOLUNTARY LEAVING BENEFIT POLICY

Section
R6-3-5005. ~~General (V.L.5)~~ General Provisions
R6-3-5040. Attendance at School or Training Course ~~school or training course (V.L.40)~~
R6-3-5050. ~~In connection with employment (V.L.50)~~ Repealed
R6-3-50135. ~~Discharge or quit (V.L.135)~~ Quit or Discharge
R6-3-50305. ~~Military service (V.L.305)~~ Repealed
R6-3-50345. Retirement ~~Pension -- retirement (V.L.345)~~
R6-3-50385. ~~Relation of alleged cause to leaving (V.L.385)~~ Repealed
R6-3-50440. ~~Termination of employment temporary cessation of work (V.L.440)~~ Repealed
R6-3-50495. ~~Voluntary (V.L.495)~~ Repealed
R6-3-50505. ~~Work, definition of (V.L.505)~~ Repealed

ARTICLE 51. DISCHARGE ~~MISCONDUCT~~ BENEFIT POLICY

Section
R6-3-51135. ~~Discharge or quit (Misconduct 1355)~~ Repealed
R6-3-51345. Retirement ~~Pension -- retirement (Misconduct 345)~~

ARTICLE 52. ABLE AND AVAILABLE BENEFIT POLICY

Section
R6-3-5240. ~~Attendance at school or training course (Able and Available 40)~~ Attendance at School or Training Course

ARTICLE 53. REFUSAL OF WORK BENEFIT POLICY

R6-3-5305. ~~General (Refusal of Work 5)~~ General; Definitions
R6-3-5340. ~~Approved training (Refusal of Work 40)~~ Repealed

ARTICLE 54. MISCELLANEOUS BENEFIT POLICY

R6-3-5440. ~~Approved training (Miscellaneous 40)~~ Repealed
R6-3-5495. Disqualification; Definition of Last Employment ~~Interpretation of work, as last employment~~
R6-3-54407. ~~Chargeability (Miscellaneous 407)~~ Repealed

ARTICLE 56. LABOR DISPUTE BENEFIT POLICY

R6-3-5601. Definitions and Explanation of Terms
R6-3-5602. Labor Dispute Notice
R6-3-5603. Eligibility During a Labor Dispute
R6-3-5604. Termination of the Labor Dispute Disqualification
R6-3-5605. ~~General (Labor Dispute 5)~~ Repealed
R6-3-5635. ~~At the factory, establishment, or other premises (Labor Dispute 35)~~ Repealed
R6-3-56125. ~~Determination of existence (Labor Dispute 125)~~ Repealed
R6-3-56130. ~~Directly interested in (Labor Dispute 130)~~ Repealed
R6-3-56175. ~~Employment subsequent to dispute or work stoppage (Labor Dispute 175)~~ Repealed
R6-3-56205. ~~Financing and participating (Labor Dispute 205)~~ Repealed
R6-3-56220. ~~Grade or class of worker (Labor Dispute 220)~~ Repealed
R6-3-56407. ~~Chargeability (Labor Dispute 407)~~ Repealed
R6-3-56445. ~~Termination of labor dispute (Labor Dispute 445)~~ Repealed
R6-3-56465. ~~Unemployment due to labor dispute (Labor Dispute 465)~~ Repealed
R6-3-56470. ~~Unemployment prior to labor dispute (Labor Dispute 470)~~ Repealed

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT

R6-3-1402. ~~Mass separations~~ Repealed

~~A. In mass separations, except those due to labor dispute, strike, or lockout, the employer shall file with the nearest public employment office information as to the reason for the separation and the number of workers to be affected thereby, at least 7 days prior to such contemplated mass layoff.~~

~~B. In any separations due to labor dispute, strike, or lockout the employer shall, not later than 3 days (exclusive of Saturdays, Sundays, and holidays) after the commencement of such labor dispute, furnish the Department a statement of the reason for the labor dispute, together with a list showing the name, Social Security account number, and type of work performed by each person whose unemployment is due to the labor dispute.~~

R6-3-1405. Shared Work

A. Shared Work Plans
1. Participation. The Department shall not permit an employee to participate concurrently in more than 1 shared work plan.
~~1. When an employing unit with an approved shared work plan(s) reorganizes or changes ownership, the election(s) of the predecessor shall cause the successor(s)' rate to be subject to the provisions of A.R.S. § 23-765, and any plan(s) of the predecessor shall be binding upon the successor(s) when the successor(s) certifies to any benefits paid under than plan(s).~~
~~2. "Compensation payable from the shared work employer" as used in A.R.S. § 23-762(A)(3) includes wages paid by the predecessor employing unit.~~
~~3. Upon approval by the Department, an employer may amend an approved plan by adding an employee(s) to the affected group provided the requirement in A.R.S. § 23-762(A)(3) is met.~~
2.4. Amendment. Upon written request by the shared work ~~An~~ employer, the Department shall:
a. Approve the transfer ~~having 2 or more approved work plans may have the shared work eligibility~~ of an eligible employee ~~employee(s) transferred~~ from 1 approved plan ~~1 affected group~~ to another approved plan; or ~~by submitting a written request to the Department.~~
b. Amend the plan to include an eligible employee who was omitted from the approved plan.

B. Shared Work Employer's Contribution Rate
~~5. A Joint Experience Rating Account established under the provisions of R6-3-1301(J)(1) shall be assigned a contribution rate as prescribed in A.R.S. § 23-765~~ When ~~when~~ any of the ~~its~~ members of a Joint Experience Rating Account established under the provisions of R6-3-1712(A) have an approved shared work plan, the Department shall assign the members a contribution rate as prescribed in A.R.S. § 23-765. ~~under the provisions of A.R.S. § 23-762.~~
~~6. An Experience Rating Account shall be assigned a contribution rate as prescribed in A.R.S. § 23-765(2) only for the years after the Department added to an employer's rate an amount as prescribed in 23-765(1).~~

C.B. Shared Work Benefits
1. Normal Weekly Hours. In A.R.S. § 23-764, the phrase "normal weekly hours of work for which the employer would not compensate the employee" means the number of hours, as defined in A.R.S. § 23-761(3), less the weekly hours of work for which the employer would compensate the employee, or for which the employer would compensate the employee had the employee worked.
a. Normal weekly hours of work include the hours calculated by a shared work employer converting the amount of an employee's average weekly earnings to an hourly equivalent.
b. Weekly hours of work for which the employer would compensate the employee include, to the nearest 10th of an hour, actual hours of work and other hours for which the employee has been or will be compensated, such as holiday pay, sick leave pay, and vacation or annual leave pay.
2. Weekly Certification. For each week of shared work benefits claimed by an employee in an affected group, the employer shall, in a format prescribed by the Department, provide and certify the following information:
a. The hours of work for which the employer compensated the employee, and
b. Whether the employee refused to accept any work offered by the employer.
3.1. Refusal of work. The statutory disqualification prescribed in A.R.S. § 23-776 applies ~~shall apply~~ when the Department determines ~~it is determined~~ that a shared work claimant failed to accept suitable full-time work offered by the shared work employer. The Department shall determine the suitability ~~Suitability~~ of the work offered as

prescribed ~~will be determined in accordance with the factors contained~~ in A.R.S. § 23-776.

4.2. Previously assessed disqualification. Designation of an employee as a participant in ~~to be part of~~ an affected group ~~on a shared work plan~~ does not terminate or suspend a previously assessed disqualification. ~~unemployment insurance disqualifications. All such disqualifications remain in effect until they are ended in accordance with the provisions of existing Arizona law. In addition, a~~ For purposes of A.R.S. § 23-778, a weekly shared work claim is a valid claim for benefits ~~and will be used to consider application of the administrative penalty as provided for in A.R.S. § 23-778~~.

~~3. Definitions. For the purposes of A.R.S. § 23-764, the following definitions shall apply:~~

~~a. Normal weekly hours of work include the hours as defined in A.R.S. § 23-761(3), or as calculated by a shared work employer converting the amount of an employee's average weekly earnings to an hourly equivalent.~~

~~b. Weekly hours of work for which the employer would compensate the employee include to the nearest 10th of an hour actual hours of work and other hours for which the employee has been or will be compensated, such as holiday pay, sick leave pay, and vacation or annual leave pay.~~

~~c. Normal weekly hours of work for which the employer would not compensate the employee means the number of hours defined in A.R.S. § 23-761(3), less the weekly hours of work for which the employer would compensate the employee, or for which the employer would compensate the employee had the employee worked.~~

5.4. Retirement pay. ~~The shared work benefit amount shall be reduced in accordance with A.R.S. § 23-791, if the shared work claimant is receiving a retirement pension. The shared work benefit amount will be computed as prescribed in A.R.S. § 23-764 before any such deduction is made. The entire~~ When retirement pay is deductible as prescribed in A.R.S. § 23-791, the Department shall deduct the weekly retirement amount ~~as determined by A.R.S. § 23-791 shall be deducted~~ from the computed shared work benefit amount.

~~5. Child support obligations. The shared work benefit award shall be subject to the deduction and withholding prescribed by A.R.S. § 23-789 if the shared work claimant is liable for child support obligations.~~

6. Extended benefits. A shared work claimant is ~~shall be~~ eligible to receive shared work benefits under the extended benefit program if ~~provided~~ the claimant meets the requirements of A.R.S. § 23-634 ~~are met~~.

7. Backdating. In the manner prescribed in R6-3-5475(E)(1), ~~Notwithstanding the provisions of R6-3-1802 and R6-3-5475~~, the Department shall can backdate the effective date of a shared work initial claim for benefits to an earlier date if ~~it can be established that~~ the claimant received misinformation about the filing of a claim from the shared work employer or the Department., except that the Department shall not backdate the ~~The~~ effective date ~~cannot be backdated~~ to a date prior to the ~~date that would have been used if the claimant had not received misinformation or late information as indicated above. In no event shall such claim be effective prior to~~ the effective date of the ~~an~~ approved plan showing the claimant as a member of an affected group. ~~Continued claims to be valid must be postmarked or filed within 14 days from the date the Department provided a form to the employer for such week, unless the time is extended for good cause shown.~~

8. Dual claims. The Department shall not permit a ~~A~~ claimant ~~shall not be permitted~~ to receive regular benefits and ~~in addition to receiving~~ shared work benefits concurrently., ~~nor shall a claimant be permitted to participate concurrently in 2 or more shared work plans.~~

9. Termination of shared work employment. A shared work claimant who terminates employment with, or is terminated by, ~~from~~ the shared work employer is not ~~shall not~~ be eligible for shared work compensation for the calendar week in which the termination occurred. When a termination occurs, the ~~The~~ shared work employer shall enter ~~be responsible for providing the Department~~ the date of termination on the weekly certification. ~~A voluntary leaving shall be considered a termination.~~

10. Offset. The Department shall use shared ~~Shared~~ work benefits ~~may be used~~ to offset any indebtedness to the Department as provided for in A.R.S. § 23-787.

D.C. Other Employment. The Department shall not charge the account of a base-period employer, who is not ~~other than~~ the shared work employer, but who continues to employ a shared work claimant, for ~~shall be noncharged for shared work~~ benefits paid to the ~~received by a shared work~~ claimant, ~~provided:~~ if the base period employer

~~1.~~ ~~Employment is given to the claimant to the same extent as during the last quarter of the claimant's base period, and~~

2. ~~The employer~~ submits written ~~such~~ information of the continued employment within 10 days of ~~after~~ the date of ~~notification or mailing of~~ the Department's notice ~~by the Department~~ that the claimant has 1st filed a claim for benefits.

R6-3-1407. ~~R6-3-1501.~~ Interested Parties

A. Interested parties ~~An interested party~~ to a benefit determination or a chargeability ~~and/or experience rating charge~~ determination are: ~~shall include:~~

1. A ~~The~~ claimant whose right to benefits is ~~would be~~ affected;
2. A ~~The~~ claimant's most recent employing unit or employer, or any base-period employer, if the employer: ~~provided that such party:~~
   a. ~~Within 10 days after the date of any required notification or mailing of notice by the Department that the individual has 1st filed a claim for benefits, submits~~ Returns the Department's Notice to Employer with a signed statement of ~~in writing~~ facts which may affect the claimant's eligibility for benefits or information on the issue of separation from his employment, ~~or~~ within 10 days after the date the Department mails the Notice to the employer's address of record; or
   b. ~~During a week for which claimant has filed a claim for benefits makes~~ Makes a bona fide offer of work to the claimant during a week for which the claimant files a claim for benefits, and sends the Department written ~~with~~ notification of the offer ~~to the Department~~ within 5 ~~five working~~ days of the offer.
3. The claimant's most recent employing unit or employer when the claimant is disqualified ~~a benefit determination disqualifies the claimant~~ on the basis of the claimant's separation from employment with the ~~such~~ employing unit or employer.

B. The Department shall make a previously excluded party an interested party to a decision involving whether wages are

usable for a claim whenever the Department determines the decision could adversely affect the excluded party.

B. Employers who have elected to make payments in lieu of contributions pursuant to A.R.S. § 23-750, are interested parties to determinations which make findings with respect to Department error.

R6-3-1408. Seasonal Employment Status; Qualified Transient Lodging Employment

A. As used in A.R.S. § 23-793:
1. A "full-time equivalent" means the number of hours in the employing unit's normal work week the employing unit considers a full-time work week, or 40 hours, whichever is less.
2. "1-year period prior to such slowdown" means the 52 completed calendar weeks immediately preceding the start date of the anticipated slowdown period.
3. "Previous year" means the same as "1-year period prior to such slowdown."

B. For the purpose of A.R.S. § 23-793(B), an application is the form provided by the Department and available to the employer at any unemployment insurance office of the Department or from any unemployment insurance tax representative. The employer shall provide the following information:
1. Identifying information, including the federal employer identification number and transient lodging privilege license number;
2. The anticipated period of the substantial slowdown of operations, the reason for the anticipated slowdown, and the expected number of full-time equivalents in the workforce during the slowdown;
3. The previous year's slowdown period, the reason for the slowdown, and the number of full-time equivalents in the employer's workforce in the 12 highest weeks of unemployment during the previous year; and
4. A copy of the employer's written notice to employees that the employment is seasonal.

C. Notwithstanding the Department's approval of the employer's application, the Department shall not deny a worker, who has filed a claim for benefits during a substantial slowdown period, the use of wages earned from the employer if the employer, in response to the Department's notice that the worker has filed a claim for benefits, does not provide written information that the worker is unemployed due solely to the substantial slowdown in operations within 10 days of the notice date.

ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS

R6-3-1505. Appeals Board Proceedings level proceedings

A. Manner of holding hearings. Hearings shall be conducted in accordance with A.R.S. § 23-674, in a manner which will ascertain the substantial rights of the persons involved. All testimony shall be taken under oath or affirmation.

A.B. Acting Member. Decisions. Decisions of the Appeals Board shall be in accordance with A.R.S. §§ 23-672 through 23-674. All 3 members of the Board shall participate in every decision issued by the Board. If the decision is not unanimous, the decision of the majority shall control. The minority may file a written dissent from the decision. If a Board member is unable, for any reason, to participate in a case or cases, upon request of the Chairperson Chairman of the Appeals Board, the Director shall appoint an individual of his choice to act for the member.

C. Judicial review. Any party aggrieved by a decision of the Appeals Board may, within 30 days following the mailing of a final decision, take an appeal against the Department to the Court of Appeals. Such appeal shall proceed in the manner provided by law for appeals from Superior Court in Civil Actions. All parties before the Appeals Board shall be given notice of the appeal and an opportunity to enter an appearance before the Court of Appeals. All such appeals shall be limited to the record before the Department unless the court orders otherwise.

B.D. Waiver of Bond on Filing of Appeals. When In every case in which an appeal is taken against the Department to the Court of Appeals, the Board shall may waive filing of the a bond, as provided required by Rule 10(a) of the Arizona Rules of Civil Appellate Procedure Procedures 10 (a).

ARTICLE 17. CONTRIBUTIONS

R6-3-1708. Noncharges to Experience Rating Accounts

Section 23-727 of the Employment Security Law of Arizona provides in part:

"A. The Department shall maintain a separate account for each employer and shall credit the account with all contributions and payments in lieu of contributions paid by the employer and shall charge the account with all benefits chargeable to it.

C. Except as otherwise provided in subsections D, E, and F, and sections 23-773 and 23-777, benefits paid to an individual shall be charged against the accounts of his base-period employers. The amount of benefits so chargeable against each base-period employer's account shall bear the same ratio to the total benefits paid to an individual as the base-period wages paid to the individual by the employer bear to the total amount of base-period wages paid to the individual by his base-period employers."

In conformity with Sections 23-727, 23-773 and 23-777 of the Employment Security Law of Arizona, the Department of Economic Security prescribes:

A. Credits shall be made to an employer's experience rating account to offset benefits charged to the experience rating account when such benefits were paid to an individual as the result of a Department decision which has been reversed upon an appeal.

B. Benefits paid to an individual while any conditions for the receipt of benefits imposed by Title 23, Chapter 4, A.R.S., were not fulfilled in his case shall not be chargeable to an employer's experience rating account. If such benefits have already been charged, the employer's experience rating account shall be credited with an equal amount as of the calendar quarter in which the illegal payment is established.

C. Benefits paid to an individual based on wage credits from 1 or more other states combined with this state shall not be chargeable to an employer's experience rating account when no benefits would have been paid upon the sole basis of wage credits in this state. A reimbursement employer shall not be relieved of his proportionate share of charges, since noncharges are prohibited in conformity with regulation R6-3-1717(A).

D. Benefits paid to an individual who has left work voluntarily without good cause in connection with his employment, or has left work for compelling personal reasons not attributable to the employer and not warranting disqualification for benefits, or has been discharged for misconduct connected with his work, shall not be chargeable to the experience rating account of an employer, from whom the individual's services were so terminated for the remainder of any current benefit year in which the employer's experience rating account is being charged for a benefit year subsequently established. If such individual is reemployed by the such employer or his successor, the circumstances of the separation from such reemployment shall determine whether the employer's experience rating account shall be charged with benefits paid in a benefit year commencing subsequent to such termination. When charge-

~~ability of benefits depends upon the circumstances under which the claimant was separated from his work as set forth in paragraph (D) of Section 23-727, then a determination that benefits shall not be charged may be made upon information obtained from the claimant or from any other source; but if necessary information is not thus obtained by the deputy, then to be relieved of charges in a proper case the employer is obligated to submit necessary separation information in writing to the Department within 10 days after the date of written notification or mailing of notice by the Department that the individual has 1st filed a claim for benefits subsequent to such separation from employment.~~

~~E. Benefits paid to an individual who continues to perform part-time employment to the same extent while filing claims for benefits as he performed for the same employer during his base period shall not be chargeable to the such employer's experience rating account for those weeks during which all conditions specified in regulation R6-3-1709 are met.~~

~~F. Benefits paid to an individual for any week during which his unemployment for any portion of a day results from a labor dispute, strike, or lockout at the factory, establishment or other premises at which he was last employed immediately prior to the such labor dispute, strike, or lockout, shall not be chargeable to the experience rating accounts of the base-period employers of the such individuals if:~~

~~1. They are paid for weeks of unemployment during which the dispute, exists;~~

~~2. They are paid for weeks of unemployment subsequent to the termination of the dispute and the employer involved in the dispute submits evidence satisfactory to the Department that the individual's unemployment is a result of the labor dispute, strike, or lockout. Such evidence shall be submitted in writing within 10 days after the date of mailing of notice by the Department that the individual has filed a claim for benefits subsequent to the termination date of the dispute.~~

~~G. Benefits paid to an individual whose employment was terminated by retirement pursuant to a nongovernmental retirement or lump-sump retirement pay plan under which the age of mandatory retirement has been agreed upon between the employer and his employees or by the bargaining agent representing such employees, shall not be chargeable to the experience rating account of an employer from whom the individual's services were so terminated. To be relieved of charges in a proper case, the employer is obligated to submit necessary information in writing to the Department within 10 days after the date of written notification or mailing of notice by the Department that the claimant has 1st filed a claim for benefits subsequent to the separation from such employment.~~

R6-3-1708. Employer Charges

A. In conformity with A.R.S. §§ 23-727, 23-773, and 23-777, the Department of Economic Security prescribes:

B. When the Department establishes a benefit overpayment, the Department shall proportionately credit the amount of the overpayment to the experience rating accounts of the claimant's base-period employers, who are being charged as of the calendar quarter the overpayment is established.

C. When the Department transfers wage credits to another state for use in establishing a claim, the Department shall:

1. Not charge an experience rating account for any benefits paid when the transferred wage credits are insufficient to establish a claim in this state; or
2. Determine chargeability of the experience rating account as prescribed in A.R.S. § 23-727(D) when the wage credits are sufficient to establish a claim, except, if the account is charged, total charges shall not exceed the maximum amount payable by this state; or
3. Not relieve a reimbursement employer of payments in lieu of contributions, including charges exceeding the maximum amount payable by this state.

D. Except as otherwise provided by A.R.S. § 23-727(E) and A.A.C. R6-3-1708(E), once the Department noncharges the experience rating account of an employer for benefits paid during the benefit year, the account remains noncharged for the duration of the benefit year. If the employer reemploys the claimant during the benefit year, the circumstances of the reemployment separation determine chargeability of the employer's account for any benefits paid during a benefit year beginning after the reemployment separation.

D. As required by A.R.S. § 23-777(C):

1. The Department shall end the noncharge to the experience rating account of a base-period employer of a worker who is unemployed due to a labor dispute and shall determine the employer's chargeability for benefits in accordance with A.R.S. § 23-727 in the following circumstances:
   a. The labor dispute ended and the worker returned to work or refused an offer of work with the employer involved in the labor dispute; or
   b. The dispute is ongoing and the worker:
      i. Had bona fide intervening employment that meets the provisions of R6-3-5604(C) and is no longer unemployed due to the labor dispute, or
      ii. Was permanently replaced by the labor dispute employer.
2. When a worker remains unemployed after a labor dispute ends, the Department shall continue to noncharge the experience rating account of the worker's base-period employer if the labor-dispute employer presents evidence, within 10 days of the Department's request, that the employer has a continuing employer-employee relationship with the worker. Evidence establishing the relationship may include:
   a. Placement of the worker's name on the recall list;
   b. Continuation of the worker's benefits, including insurance, profit sharing, vacation, and sick leave; and
   c. Retention of the worker's seniority rights.
3. When the worker's continued unemployment ceases to be a result of the labor dispute, the Department shall redetermine the employer's chargeability for benefits paid to the worker as prescribed in A.R.S. § 23-727.

E. For the purpose of applying A.R.S. § 23-727(F):

1. A retirement pay plan is a plan provided by either a nongovernmental individual employer or group of employers in a collective retirement plan, and
2. A collective retirement plan is a group of employers and workers in an industry that pay into 1 fund for the workers' retirement.

ARTICLE 18. BENEFITS

R6-3-1803. Benefit Notice and Determination ~~of Benefit~~ Rights

~~A. The Department shall make unemployment insurance benefit determinations in conformity with Sections A.R.S. §§ 23-772 and 23-773 and the provisions of this rule.~~

~~B. When a claim for benefits is filed, the Department shall promptly notify the most recent employing unit or employer of the claimant that a claim has been filed. Such notice shall contain the reason given by the claimant for separation from employment and shall advise such employer that it is manda-~~

~~tory upon the employer to protest payment to the claimant upon any statutory grounds, if such grounds exist, and such protest shall be made within 10 business days after the date of the statement or notice.~~

A.C. When the claimant files a claim to establish a benefit year, ~~When an initial claim for benefits is filed,~~ the Department shall prepare a statement showing ~~as to~~ the claimant's weekly benefit amount, total benefits, base-period wages, and benefit year. ~~other data pertinent to the claimant's benefit rights.~~ Prior to the expiration of the benefit year, the claimant may protest the statement if the claimant has reason to believe base-period wages are omitted or incorrect. Upon receipt of a protest, the Department shall investigate and revise the statement or issue a determination, as prescribed in A.R.S. § 23-773, explaining why the original statement is correct.

B. As prescribed in A.R.S. § 23-772, when an initial claim for benefits is filed, the Department shall promptly notify the claimant's most recent employing unit or employer of the claim filing. The notice shall contain the reason given by the claimant for separation from employment and shall advise the employer that the employer may protest payment to the claimant upon any statutory grounds, if such grounds exist, by returning the protest within 10 days after the date of the notice.

C. In administering A.R.S. § 23-706(A), the Department shall issue a determination to a reimbursement employer on whether a benefit overpayment classified as administrative is a benefit overpayment caused by Department error.

~~D. The claimant shall be given a copy of the initial determination and the reasons therefor and shall be given copies of any additional determinations which adversely affect the claimant's rights to benefits. Each determination shall specify the appeal rights of the parties and the period within which any appeal must be filed under Title 23, Chapter 4, A.R.S.~~

~~1. Such statement shall constitute a final decision within the meaning of A.R.S. §§ 23-673 and 23-773, unless there are newly discovered facts which affect the validity of the original determination or unless a written request for reconsideration is filed by the claimant (or the claimant's most recent employer) within 15 calendar days after notification was mailed to the claimant's (or the employer's) last known address, specifying the grounds of objections to such statement of claim.~~

~~2. If such written request for reconsideration is filed by an interested party and is timely, or additional information is obtained by the Department, a deputy shall examine such written request or information for reconsideration and shall promptly issue a redetermination.~~

~~E. All base-period employers shall be given notice of the name and social security account number of any former employee who has filed an initial claim establishing a benefit year for the purpose of drawing unemployment benefits.~~

R6-3-1804. ~~Payment of benefits to combined-wage claimants~~ Repealed

~~A. An unemployed worker with covered employment and wages in more than 1 state may combine all such employment and wages including federal and military in 1 state in order to qualify for benefits or to receive increased benefits.~~

~~B. Where the claimant has sufficient wage credits in the base period to qualify for an Arizona award, protest rights shall be afforded base period employers. Appropriate charges will be made to these employers on a pro-rata basis up to the maximum amount, except as provided in (D) below. The amount in excess of the maximum shall not be charged to the experience rating account of any employer.~~

~~C. Where the claimant is not separately eligible for an Arizona claim, base period employers shall not be afforded protest rights as no charges will be made to any employer's account, except as provided in (D) below.~~

~~D. Reimbursement employers must be charged their proportionate share of the payments made by the paying state without exception or regard for the claimant's Arizona entitlement, even though the charges exceed the maximum award, in accordance with regulation R6-3-1717(A).~~

R6-3-1805. ~~Availability of students~~ Repealed

~~A. The availability of students, except for students in approved training in accordance with A.R.S. § 23-771.01 and regulation R6-3-1809, shall be determined in accordance with A.R.S. § 23-771 and the provisions of this regulation.~~

~~B. An individual shall be presumed to be unavailable for work for any week of unemployment if such individual is a student; provided, however, that such presumption may be rebutted upon a showing to the satisfaction of the Department that such individual was, in fact, available for work. For purposes of this regulation, a student is an individual who is registered for full-time attendance at, and regularly attending an established school, college or university, or similar educational institutions, or who has so attended during the most recent regular term.~~

~~C. A determination that an individual is a student may be rebutted by a substantial showing that the individual will not return to school during the next regular term. The following may be accepted as evidence of termination of student status: Graduation, discontinuance before end of term, failure to commence the next regular term.~~

~~D. For purposes of this regulation, the definition of full-time attendance as used by the institution last attended shall apply.~~

~~R6-3-1806. Payment of benefits to interstate claimants~~

~~Section 23-644 of the Employment Security Law of Arizona authorizes the Department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or the federal government, or both.~~

~~In conformity with this Section, the Department of Economic Security prescribes:~~

~~A. This regulation shall govern the Department of Economic Security in its administrative cooperation with other states adopting a similar regulation for the payment of unemployment insurance benefits to interstate claimants.~~

~~B. Registration for work~~

~~1. Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.~~

~~2. Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.~~

~~C. Benefit rights of interstate claimants~~

~~1. If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.~~

~~2. A claimant with covered employment or wages in more than 1 state and/or federal or military employment, may choose to combine all such employment and wages under the base period of a single state in order to qualify for benefits or to receive increased benefits. When the claimant has so chosen, designation of the paying state shall be~~

~~in accordance with the interstate arrangement for combining employment and wages.~~

~~3. For the purpose of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.~~

~~D. Claim for benefits~~

~~1. Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.~~

~~2. Claims shall be filed in accordance with agent state regulations for intrastate claims in local employment office, or at an itinerant point, or by mail.~~

~~a. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state, under circumstances which it considers good cause, shall accept a continued claim filed up to 1 week, or 1 reporting period, late. If a claimant files more than 1 reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.~~

~~b. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.~~

~~E. Determination of claims~~

~~1. In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.~~

~~2. The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.~~

~~F. Appellate procedure~~

~~1. The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.~~

~~2. With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.~~

~~G. Extension of interstate benefit payments to include claims taken in and for Canada. This regulation shall apply in all its provisions to claims taken in and for Canada.~~

R6-3-1806. Interstate Claimants

Under A.R.S. § 23-644, the Department shall participate in the Interstate Benefit Payment Plan and shall act as the agent for the other states and Canada who subscribe to the Plan.

~~R6-3-1807. Payment of benefits for partial unemployment Repealed~~

~~Section 23-621 of the Employment Security Law of Arizona provides:~~

~~"An individual shall be deemed 'unemployed' with respect to any week during which he performs no services and with respect to which no wages are payable to him, or with respect to any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount."~~

~~In conformity with this Section, the Department of Economic Security prescribes:~~

~~A. Payment of benefits for partial unemployment shall be made in accordance with Sections 23-621, 23-672, 23-771 through 23-777, and 23-779 and 23-782 of the Employment Security Law and the provisions of this regulation.~~

~~B. Employer responsibilities~~

~~1. With respect to 1st week of partial unemployment. An employer shall furnish to any worker in his employ a completed partial employment notice within 5 working days after the regular payday for a week in which because of lack of work, he has furnished the worker less than the worker's normal full-time work and for which the worker was compensated less than the maximum weekly benefit amount. Such notice shall be required only with respect to the 1st week of each period of the worker's potential partial unemployment. Partial employment notice shall contain the name of the worker, his Social Security account number, the beginning date of the period of partial unemployment, and such other information as may be required. When a period of partial unemployment for workers in his establishment is imminent, an employer may notify the nearest office of the Department and request a visit by a representative of the Department.~~

~~2. With respect to subsequent weeks of partial unemployment. An employer shall complete and furnish to the worker a certification of partial earnings within 5 working days after the regular payday for any week in which the worker was partially unemployed. The certification shall contain the worker's name, social security account number, the beginning and ending dates of the week with respect to which the report is made, the number of hours worked and the gross wages earned in such week, a proper certification as to the worker's having worked less than his customary full-time hours because of lack of work in such week, and such other information as may be required.~~

~~3. With respect to information requested by the Department. When requested by the Department, an employer shall within 2 working days furnish the Department with information concerning a claimant's hours of work, wages during the claim periods involved, and such other information as is requested.~~

~~4. In the event of separation. In addition to the requirements of paragraphs (1) and (2) above, if a partially unemployed worker becomes separated from his employment, the employer immediately shall furnish the worker with a certification of partial earnings for the week in which such separation occurred.~~

~~C. Registration and filing of claims for partial unemployment~~

~~1. Filing of initial claims for partial benefits. A claim for benefits for a partially unemployed individual on a partial employment notice and initial claim, mailed or delivered to the local Department office, shall constitute such individual's notice of unemployment, registration for work, and initial claim for benefits. Such claim shall be effective on Sunday of the 1st week in which the individual became partially unemployed, provided that within 14 days from the date he was 1st furnished the partial employment notice and initial claim by his employer he~~

~~mails or delivers the properly completed form to the local Department office. When the individual fails to mail or deliver the completed partial employment notice and initial claim within the above period, his claim shall be effective on Sunday of the 1st week of his partial unemployment which ended not more than 14 days prior to the date he mails or delivers the notice and claim to the Department office.~~

2. ~~Filing of continued claims for partial benefits. A claim for benefits for a partially unemployed individual, on a certification of partial earnings and continued claim, mailed or delivered to the local unemployment insurance office, shall constitute such individual's notice of unemployment, registration for work, and claim for benefits or waiting period credit covered by the claim. Such claim shall not be valid if postmarked or delivered in person 15 or more days after the date on which the individual has 1st been furnished the certification of partial earnings and continued claim stating his earnings for such week.~~

3. ~~Filing of claims for total benefits. When no more than 4 consecutive weeks of total unemployment follow a week of partial unemployment, such weeks of total unemployment may be handled in all respects as though they were weeks of partial unemployment. If total unemployment extends beyond 4 weeks, or if employer-employee relationship is terminated, the individual shall file subsequent claims in accordance with regulation R6-3-1802.~~

D. ~~Extended period for registration and the filing of claims for good cause. Notwithstanding the provisions of paragraph (3), if the Department finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time set forth in paragraph (3) was due to failure on the part of the employer to comply with any of the provisions of paragraph (2), or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the Department to discharge its responsibilities promptly in connection with such partial unemployment, the Department shall extend the period during which such claim may be filed to a date which shall not be less than 7 days after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment; provided, however, that the period during which such claim may be filed shall in no case extend beyond the end of the thirteenth week subsequent to the end of the benefit year during which the week of partial unemployment occurred.~~

E. ~~Employer records in connection with partial unemployment. In addition to the requirements set forth in regulation R6-3-1702, Work Records, each employer shall keep his payroll records in such form that it is possible for him to report with respect to each worker in his employ who may be eligible for partial benefits.~~

1. ~~Whether during any calendar week a worker was in fact employed less than full time;~~
2. ~~The amount of wages earned, by calendar weeks, by each partially unemployed worker;~~
3. ~~Time lost, if any, by each partially unemployed worker, due to his unavailability for work.~~

R6-3-1808. Payment on Account of Retirement

A. Pension Defined. Pension, as used in A.R.S. §§ 23-791 and 23-624, ~~means any plan to which the employer contributes funds and includes all types of retirement pay including retirement disability or any other periodic payment which is based on the previous work of the individual. It~~ does not include survivor's benefit payments or other ~~a~~ periodic payment~~, or any portion thereof~~, which bears no direct relationship to the level of prior remuneration or the length of past employment of the claimant.

B. Weekly Deduction.

1. The Department shall determine the ~~The~~ amount of pension attributed to a week ~~shall be determined~~ by dividing the pension recipient's ~~individual's~~ monthly pension by 4.333 and rounding the result to the lowest dollar.
2. When the recipient contributed at least 45% of the amount for the pension, the Department shall determine the deductible amount by multiplying the weekly pension by.45 and rounding the result to the lowest dollar.

C. Effective Date. The effective date of a reduction in benefits required by A.R.S. § 23-791(A) begins ~~"The amount of benefits payable to an individual for any week which begins in a period with respect to which the individual is receiving or will receive a pension. . ." means that the reduction of benefits on account of pension shall begin~~ with the 1st week in which either of the following occurs:

1. The recipient ~~individual~~ receives a pension payment~~,~~, or
2. The recipient ~~individual~~ receives a determination or official notification from the pension source that provides the effective date and the amount of the pension payment and the ~~a~~ pension payment will be made for the week in question. ~~This notification must include the effective date and the amount of pension payment.~~

D. Retroactive Payments.

1. An overpayment shall not result from retroactive pension payments for weeks prior to receipt of official notification, nor shall an overpayment result from any retroactive recomputation of the pension payment ~~recomputation(s)~~, unless the recipient ~~claimant~~ fails to disclose the recomputation.
2. The Department shall not pay retroactive benefits ~~Benefits~~ previously denied due to the claimant's receipt of a pension payment that ~~shall not become payable if the retirement payment~~ was made in error and must be repaid.

E. Lump-sum Payments. The Department shall:

1. Allocate a ~~A~~ pension received ~~totally~~ in 1 ~~one~~ lump-sum payment ~~shall be allocated~~ to the week in which the payment is received~~,~~.
2. Treat a ~~A~~ yearly lump-sum pension payment ~~shall be considered~~ as a periodic payment and allocate the payment over 52 weeks~~; the amount divided by 52 and allocated on a weekly basis~~.
3. Disregard a lump-sum or yearly lump-sum payment that is rolled over into a non-taxable retirement plan in accordance with provisions of the Internal Revenue Code; and
4. Disregard a lump-sum payment or other type payoff made because of a separation occurring before the time the recipient meets the length of service terms and age requirement established by the pension plan even if the payment includes pension funds.

~~R6-3-1809. Eligibility for approved training~~

~~A.~~ ~~Approved training~~

1. ~~Training under the Job Training Partnership Act of 1982, or its successor, is approved training for the purposes of A.R.S. § 23-771.01 and this regulation.~~
2. ~~For training which is not under the Job Training Partnership Act of 1982, or its successor, authorized personnel of the Department shall approve such courses of training or retraining which provide an individual the opportunity to achieve reemployment through the development of his skills and abilities. To qualify for approval, the following requirements shall be met:~~

a. The training course and facilities must be approved by the Department of Economic Security, or an authorized institution of another state, and must provide the following:
   i. Program content that is adequate and provides for reasonable progression of trainees in qualifying for suitable employment;
   ii. A training period that is consistent with periods customarily required for comparable training;
   iii. Adequate staff and facilities;
   iv. Proper records of attendance and progression.
b. Training may be considered for approval upon written application from a training facility setting forth the information required by the Department to determine whether standards are met; or upon written application of the trainee, in which case the information necessary to determine whether the standards are met shall be requested from the training facility.
c. Approval of a training course shall be withdrawn when it is found that the outlined standards are no longer met.
d. Training is not limited to vocational training but also may include academic courses which improve an individual's employment opportunities. Such courses shall include but are not limited to:
   i. Courses which prepare an individual for taking an examination to receive a general equivalency diploma (GED),
   ii. Courses which are designed to improve an individual's understanding of the fundamentals of English or mathematics.
   iii. Courses which will prepare an individual for technological changes in the labor market.
   iv. Courses which will impart to an individual knowledge of any aspect of computer technology.
e. "The training objective must be attainable within 52 training weeks, and the training must require either a minimum of 12 semester credit hours during fall and spring semesters and at least 6 semester credit hours during summer sessions, and result in a training certificate from an academic institution, or the training must require a minimum of 20 hours per week of supervised participation at a non-academic training facility.
f. Participation in a vocational evaluation administered by a public agency shall constitute approved training, but the evaluation may not exceed 2 consecutive claim weeks for a single evaluation, and shall not exceed 4 claim weeks within a single benefit year.

B. Selection and referral
1. Individuals will be selected and referred to training under the Job Training Partnership Act of 1982, or its successor.
2. For training which is not under the Job Training Partnership Act of 1982, or its successor, authorized selection and referral personnel of the Department shall refer the individual for enrollment in an approved training course when it is found that:
   a. Either
      i. Prospects for continuing employment for which the individual is fitted by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which the individual resides or is seeking work, or
      ii. The individual is identified as a dislocated worker as defined in Title III of the Job Training Partnership Act of 1982, and the state of Arizona Dislocated Worker Plan; and
   b. The individual possesses aptitudes or skills which can be usefully supplemented within a short time by retraining and the individual has the qualifications and aptitudes necessary to reasonably assure his successful completion of the training course; and
   c. The approved training course is likely to prepare the individual in a relatively short time for an occupation for which there are, or are expected to be in the immediate future, reasonable full time employment opportunities in the locality in which the individual resides or is seeking work; and
   d. The individual is available for counseling or other personal interview and for required occupational tests.
3. Without regard to (B)(1) or (B)(2) above, an employer who is a claimant's only base period employer, and who has been determined subject to charges for benefits paid to the claimant, may refer such individual to approved training, provided the training meets the criteria set forth in subsection (A) of this regulation.

C. Eligibility for unemployment insurance benefits during approved training including extended benefits under A.R.S. §§ 23-626 through 23-639 may be paid to an otherwise eligible individual while he is attending approved training only if the training facility states in writing with respect to each week that the individual is enrolled in and satisfactorily pursuing the course of instruction approved for him.

D. Continued claims for weeks of unemployment during approved training shall be filed on the form prescribed by the Department, and may be mailed or filed in person at a local office of the Department. To be valid, such claims must be postmarked or filed within 14 days from the ending date of the week for which the claim is filed, unless the time is extended for good cause.

E. Only subsistence benefits paid to the trainee for his own personal entitlement will be considered as training allowances for the purpose of A.R.S. § 23-771.01. Dependents' allowances paid to the trainee for his dependents, course costs and/or tuition payments, which might include the cost of books, supplies, tools, etc., and any other payment which does not fall into the category of subsistence benefits for the trainee's own entitlement will have no bearing on the claim for unemployment insurance.

R6-3-1809. Eligibility for Approved Training

A. Approved training under A.R.S. § 23-771.01 includes vocational training or academic courses that provide a claimant the opportunity to achieve reemployment through the development of the claimant's skills and abilities.
1. A claimant is "in training with the approval of the department" when the claimant presents a document from the sponsoring agency that the claimant is participating in 1 of the programs listed in this subsection.
   a. Training, except for on-the-job training, under Titles II, III, or IV of the Job Training Partnership Act, or its successor.
   b. A vocational rehabilitation program sponsored or administered by the Department or another public agency.
   c. Training sponsored or administered by 1 or more programs of the Department.
   d. Training designed to improve a claimant's understanding of the fundamentals of English or mathematics or training that is intended to result in a general equivalency diploma (GED), unless the

claimant is a student enrolled in and regularly attending a public or private secondary educational institution.

e. Training recommended or financed by the claimant's only base-period employer who is subject to charges for benefits paid to the claimant.

2. If the training does not meet any of the provisions of subsection (A)(1), the claimant is in training with the approval of the Department if all the following conditions are met:

a. The training facility is registered with the Department of Education or its successor, or a comparable agency of another state, and is located within the United States.

b. The training course is approved by the Department of Education or its successor, or a comparable agency of another state and:

i. Is for a duration of at least 4 weeks but not more than 52 weeks of instruction; and

ii. At an academic institution, requires either a minimum of 12 credit hours during fall and spring semesters or at least 6 credit hours during summer sessions, and results in a training certificate; or

iii. At a vocational training facility, requires a minimum of 20 hours per week of supervised participation.

c. Either the claimant's:

i. Prospects for continuing employment for which the claimant is fitted by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which the claimant resides or is seeking work; or

ii. Training, skills, and past work history establish that the claimant only qualifies for jobs that normally pay at or within $1.00 of the minimum wage and are unlikely to provide advancement opportunity.

d. The claimant possesses aptitudes or skills which can be usefully supplemented by retraining and has the qualifications and aptitudes necessary to reasonably assure successful completion of the training course.

e. The training course is likely to prepare the claimant for an occupation for which there are, or are expected to be in the immediate future, reasonable full-time employment opportunities in the locality in which the claimant resides or is seeking work.

B. Weekly Eligibility.

1. The Department shall pay unemployment insurance benefits, including extended benefits under A.R.S. §§ 23-626 through 23-639, to an otherwise eligible claimant while the claimant is in approved training if the claimant files a timely claim for a week of benefits in the format prescribed by the Department:

a. The claim shall include the following information for the applicable claim period.

i. A statement of any employment the claimant held and any wages the claimant earned.

ii. A statement of any training assistance the claimant received or will receive.

iii. A statement as to whether the claimant missed any scheduled training.

iv. The claimant's signature or personal identification number.

v. A statement from the training facility as to whether the claimant is enrolled in training and satisfactorily pursuing the training course, and

vi. The signature or identification number of the training facility's representative which is on file with the Department as being authorized to certify to the claimant's training attendance and progress.

b. The claim is timely filed when the Department receives the claim within 14 days of the claim week ending date. If the claim is not received within 14 days, the claimant shall establish good cause for the untimeliness as prescribed in R6-3-5475(H).

c. If the training facility has a temporary break in training of less than 6 weeks, and the facility notifies the Department by telephone or in writing that the claimant will continue the training after the break, the Department shall deem the claimant in training.

2. For purposes of A.R.S. § 23-771.01(B), the Department shall deem subsistence benefits received from a governmental, nonprofit, or community agency for the claimant's own personal entitlement as a training allowance.

a. A subsistence payment for the claimant's own personal entitlement includes funds covering transportation or meal costs, but does not include funds covering course costs, tuition, books, supplies, tools, or an allowance for dependents.

b. The Department shall allocate the training allowance for each week claimed starting with the week the claimant 1st receives the allowance or the week the claimant receives notice from the agency paying the allowance of the amount to be paid, whichever occurs 1st.

c. An overpayment shall not result from retroactive payments for weeks prior to the paying agency notice or 1st payment, unless the claimant fails to tell the Department about the allowance.

ARTICLE 50. VOLUNTARY LEAVING BENEFIT POLICY

~~**R6-3-5005. General (V.L.5)**~~

~~Section 23-775 of the Employment Security Law of Arizona provides in part: "An individual shall be disqualified for benefits:~~

~~1. For the week in which he has left work voluntarily without good cause in connection with his employment, if so found by the department, and in addition to the waiting week, for the duration of his unemployment and until he has earned wages in an amount equivalent to 5 times his weekly benefit amount otherwise payable."~~

~~A. Definition. The term "left work voluntarily" (voluntary quit), for the purpose of benefit payment, means the termination of a worker-employer relationship by means of the worker's own intention, as distinguished from the termination of employment brought about by either:~~

~~1. The initiative of the employer, or~~

~~2. Considerations outside the control of the worker.~~

~~B. Purpose of the disqualification~~

~~1. Only those workers who are involuntarily unemployed are to receive benefits. Those who leave work voluntarily without good cause in connection with their work will not receive benefits. Consideration must be given not only to the fact that they left work voluntarily but also to the circumstances and reason for leaving. The mere fact that a worker quits a particular job does not necessarily mean that he is voluntarily unemployed. The specific reasons for leaving must be considered in determining if the separation is voluntary or involuntary.~~

2. The employer's experience rating account shall not be charged when it is determined that the worker left the employment voluntarily and without good cause in connection with the work.

C. Leaving for compelling personal reasons not attributable to the employer (V.L.5.1)

1. A separation for a compelling personal reason is not disqualifying.
2. Benefits paid to claimants who have separated from their work for compelling personal reasons not attributable to the employer shall not be charged to the employers' experience rating account.
3. Definitions.
   a. "Compelling" means to drive or urge with force, to constrain, to force to yield, to overpower. Synonyms for "compel" are require, coerce and drive.
   b. "Personal reasons" for leaving are those causes which arise from the personal circumstances of the claimant as distinguished from causes arising from a condition created by or relating solely to the employment. Generally, changes in the personal circumstances create the compulsion for separation. Changes in conditions or terms of employment may affect the claimant's personal affairs and compel a worker to leave; however, these reasons are related to the work and should not be considered as personal circumstances when applying the law.
   c. The term "attributable to the employer" although often considered synonymous with "in connection with his employment" is less restrictive. It includes reasons relating not only to conditions of employment but also to an employer's conduct, which may or may not concern the employment relationship. Any act or omission of the employer which renders the work unsuitable for the claimant would constitute good cause attributable to the employer.
   d. Among the reasons for leaving which generally may be determined as being for compelling personal reasons not attributable to the employer are:
      Compensable industry injury (See R6-3-50235(B))
      Conscientious objection
      Distance to work
      Domestic circumstances
      Care of children
      Head of household in another locality
      Housing
      Illness or death of immediate family members
      Health or physical condition
      Military service
      Resuming attendance at approved training (Deputies are responsible for examining availability and other eligibility factors for each claimant)
   e. Reasons which generally may be determined as non-compelling personal reasons are:
      Attendance at school
      Domestic circumstances
      Household duties
      Marriage
      Pension
      Personal affairs
      Prospect of other work
      Self-employment
      Vacation
      Weather or climate
   f. Reasons which should be considered as attributable to the employer and which should be considered only in relation to A.R.S. 23-775, 1 of the law (voluntary leaving without good cause in connection with employment) generally will be:
      Residence requirements
      Disciplinary action
      Equipment
      Hours and days of work
      Leaving in anticipation of discharge
      Leaving prior to effective date of discharge
      Nature of work
      Union relations
      Wages
      Working conditions

R6-3-5005. General Provisions

A. For the purpose of interpreting A.R.S. § 23-775(1), the following phrases have the meanings prescribed in this subsection:
   1. "In connection with the employment" means a condition related to employment caused a worker to leave employment. If the employer changes the conditions or terms of employment, and the changes affect the worker's personal affairs, the worker leaves employment in connection with the employment rather than as a result of personal circumstances.
   2. "Left work voluntarily" means that a worker terminated the worker-employer relationship and intended to do so.

B. For the purpose of interpreting A.R.S. § 23-727(D), the following phrases have the meanings prescribed in this subsection:
   1. "Compelling personal reasons" mean causes which arise from a worker's personal circumstances rather than from a condition created by or relating solely to the employment and which leave the worker with no reasonable alternative but to end the employment relationship.
   2. "Not attributable to the employer" means that an employer committed no act or omission to make an employment relationship unsuitable for a worker.

R6-3-5040. Attendance at School or Training Course (V.L.40)

A. Leaving to Attend School
   Except as provided in subsection (B), a worker Workers, except those in approved training, who leaves leave a job to attend go to school or training quits quit voluntarily without good cause in connection with the work.

B. Students leaving summer employment. Students voluntarily quit without good cause in connection with the work when they leave summer work because they plan to return to school, even if the hiring agreement was that the student would leave at or near the end of the vacation period.
   1. The term "student" is as defined in R6-3-1805, except that failure to begin the next regular school term does not remove the worker from classification as a student.
   2. "At or near the end of the vacation period" should be interpreted liberally. It means any time that it is logical to conclude that the separation was because of "student" status and not because of other factors. This policy can apply even if the separation was considerably before or a few days after the start of the school term. What matters is that the separation was because of the student status, and not for other reasons.

B.C. Leaving for Approved Training
   1. Leaving to resume attendance at approved training. A worker Workers in approved for and attending training as prescribed in under A.R.S. § 23-771.01 and A.A.C. R6-3-

1809 leaves work for a compelling personal reason if the work: may have

1. Was temporary, stop-gap employment during school vacation periods or other breaks school closings, and the worker leaves If they leave that work to continue approved training when school reopens opens, they do so for a compelling personal reason;, or
2. Leaving while attending approved training. Workers who are employed while in approved training under A.R.S. § 23-771.01 may find that the work Hinders the worker hinders them from making satisfactory progress in school. If they leave the work for that reason, they separate for a compelling personal reason.

R6-3-5050. In connection with employment (V L 50) Repealed

A. When a claimant intentionally ends his employment, it must be determined if the reason for leaving was "in connection with his employment" or for strictly personal circumstances. See R6-3-5005 for general categories.
   1. If the worker leaves his employment due to a condition of employment, the leaving is "in connection with his employment".
   2. Even though personal circumstances have some bearing on the separations, if it is related to the work, it is "in connection with his employment" rather than a quit for "compelling personal reasons".
   3. An employer need not be at fault, nor directly responsible for the worker's difficulty, for a leaving to be for "good cause in connection with his employment".

R6-3-50135. Discharge or quit (V L 135)

A. General (V L 135.05)
   1. A worker's separation from employment is either a quit or a discharge.
   2. The claimant quits when he acts to end the employment and intends this result.
   3. The separation is a discharge when it results from the employer's intent and action. This includes layoff for lack of work, and requests by the employer for worker's resignation.
   4. In borderline cases the determination of whether a separation is a quit or discharge will be made on the basis of who was the moving party.
      a. The claimant is the moving party when he could have continued to work under conditions of employment not amounting to new work, if the worker is offered continued employment on or before the termination date. This is true even though a date of separation has been stated or agreed to. See R6-3-50315.
      b. In any other situation the employer is the moving party, and the separation is a discharge.
      c. Generally, demands or expressions of criticism and efforts to clarify the position of the other party do not constitute notice of intent to quit or to discharge.
   5. Once the notice of intent to end the employment relationship has been given and acted upon by either party, attempts to withdraw the termination action will not usually alter the type of separation.
      a. The basic cause of separation (discharge or quit) will not change in cases where the separation is set up by 1 party but allows, under certain conditions, the other party to choose the time and/or type of separation.
      b. A discharge will be found where the employer has notified the worker that he will be discharged but permits the worker to choose the last day of work.
      c. An interim agreement does not change the type of separation even though there may be a delay in the date of separation (e.g., the claimant tells the employer he is quitting and accepts the employer's request to work long enough to train a replacement. Subsequent failure by the employer to keep the worker in employment as planned does not make the separation a discharge).
   6. For exceptions to these rules see R6-3-50135(B) and R6-3-50135(D).

B. Absence from work (V L 135.1)
   1. Often a determination as to whether a worker left his employment is difficult, especially in 2 situations:
      a. When he has been absent from work prior to the time his employer considered the employment ended.
      b. When it appears that the employer has ended the employment, regardless of any act of the worker.
   2. A leaving will be found when at the time of separation the worker's employment ended as a result of his own act. It is important to examine a worker's acts to see if they had the effect of terminating his employment.
   3. Deliberate absence from work or refusal to report to work is considered a voluntary leaving if a discharge is not definitely established. The date of separation in a leaving arising from absence from work shall be determined in accordance with R6-3-5460(A).

C. Interpretation of remarks or action of employer or employee (V L 135.2). When the known facts in a case do not clearly indicate whether a worker quit or was discharged, it is necessary to interpret remarks or acts of the worker and the employer to reach a decision. It must be determined if the worker by his own act or remarks quit, or whether the acts or remarks of the employer terminated the employment.

D. Leaving prior to effective date of discharge (V L 135.25)
   1. Generally a worker would leave without good cause in connection with his work if he quits before the effective date of discharge even though he has been told that the duration of his employment is limited.
   2. He would leave with good cause connected with the work if:
      a. He can show that he would suffer substantial detriment by remaining at work until the date of discharge, or
      b. He quits to accept a definite offer of work with another employer.

E. Leaving in anticipation of discharge (V L 135.35)
   1. An individual who leaves work in anticipation of a discharge may or may not be determined to have quit, depending on individual circumstances.
   2. The intention of the employer and the claimant must be analyzed. The exact remarks of employer and claimant to each other should be obtained and weighed. It must be determined who initiated the separation and who carried it out.
   3. When a claimant interprets remarks of fellow employees or supervisors to mean that he is to be discharged, he must take steps prior to leaving to find out if he is, in fact, to be discharged. If he fails to do so and was not to be discharged, he leaves work voluntarily without good cause in connection with his work.
   4. Leaving when told he is to be discharged for acts or omissions amounting to misconduct connected with his work

~~is a discharge for misconduct and should be determined under the appropriate section of these rules.~~

~~5. Leaving because of a disciplinary layoff which is reasonable and non-discriminatory constitutes a voluntary quit without good cause connected with the work. See R6-3-50440(D).~~

~~E. Resignation intended (V.L.135.4). When a worker submits his resignation to become effective at some future time, but is discharged prior thereto, a question may arise as to whether there has been a discharge for leaving. See R6-3-51135(B).~~

~~G. Leave of absence -- definite or indefinite period (V.L.135.5). (Leave of absence is defined under Voluntary Leaving R6-3-50440.)~~

~~1. Definite period~~

~~a. When an employee is granted a leave of absence for a definite period, but does not return at the expiration of the leave, his reasons for not returning to work determine the type of separation. If a disqualification is applied, the date of separation is the 1st working day after the expiration of the leave.~~

~~b. A leaving for compelling personal reason is found if the employee is on leave for a definite period and wishes to return to work before the expiration of the leave, but no work is available unless the leave expires. If the employee fails to return to the work at the end of that leave, and work is then available to him, a new separation determination shall be made.~~

~~c. When an employee returns at the end of a definite leave of absence, and finds that employer has no work for him, the separation is a layoff.~~

~~2. Indefinite period. When an employee is on leave for an indefinite period but finds on his return that the employer has no work for him, the separation is a layoff.~~

~~3. When an employee on leave of absence applies for benefits without notifying the employer of his availability for work, the separation is generally a voluntary leaving without good cause in connection with the work. The claimant's reason for failure to re-apply for work with his last employer determines whether a disqualification applies.~~

~~H. Volunteering for layoff. When an individual volunteers or submits his name to be considered for a layoff or furlough due to a reduction in the work force, a decision must be made as to who initiated the action.~~

~~1. When an employer determines that a layoff is to occur and then inquires as to whether there are individuals who will volunteer for the layoff, the separation is a discharge for nondisqualifying reasons.~~

~~2. When an employee requests or volunteers for layoff status prior to any specific announcement by the employer and the employer acts upon the request, the separation is a voluntary leaving which is disqualifying unless it can be established that the leaving was for compelling personal reasons.~~

R6-3-50135. Quit or Discharge

A. Distinguishing Quits and Discharges

1. Except as otherwise provided in this Chapter, a worker's separation from employment is either a quit or a discharge.
   a. The separation is a quit when the worker acts to end the employment and intends this result.
   b. The separation is a discharge when the employer acts to end the employment and intends this result. A discharge includes:
      i. A layoff for lack of work; and
      ii. A request by the employer for the worker's resignation.
2. The Department shall determine whether a separation is a quit or discharge by considering all relevant factors, including:
   a. Both parties' remarks and actions,
   b. Who initiated the separation, and
   c. The parties' intentions.
3. A party's expression of criticism or effort to clarify the position of the other party does not by itself constitute notice of intent to quit or to discharge.
4. When the worker or the employer gives notice of intent to end an employment relationship, later attempts to withdraw the termination do not change the type of separation, except as otherwise provided in subsection (A)(5).
   a. The type of separation does not change even if:
      i. The party who causes the separation allows the other party to choose the time or type of separation, or
      ii. The parties agree to delay the date of separation.
   b. A separation is a quit when the worker tells the employer the worker is quitting but agrees to work long enough to train a replacement. The separation remains a quit even if the employer later fails to temporarily keep the worker.
5. A separation is a quit when an employer, who previously gave a worker notice of intent to end the employment relationship, on or before the intended termination date offers continued employment under conditions not amounting to new work, and the worker elects to leave as of the original termination date.

B. Leaving before Effective Date of Discharge

1. Unless a worker establishes good cause or a compelling personal reason for leaving, as prescribed in this Article, a worker who quits before the effective date of discharge leaves work without good cause in connection with the work.
2. When a worker quits because the employer has told the worker that the worker is to be discharged for acts or omissions amounting to misconduct connected with the work, as determined by the Department, the rules in Article 51 governing separation for misconduct apply.

C. Leaving in Anticipation of Discharge

If a worker, based on information other than the employer's authorized notification of discharge, believes that the employer intends to discharge the worker, the worker shall take steps, prior to leaving, to find out if the worker is, in fact, to be discharged. If the worker fails to do so and was not to be discharged, the worker leaves work voluntarily without good cause in connection with the work.

D. Discharge before Effective Date of Resignation

1. If a worker submits a resignation with a specific effective date, and the employer discharges the worker before the effective date:
   a. The separation is a discharge for reasons other than work-connected misconduct if the discharge is because of the resignation and is 15 days or more before the effective date of the resignation; and
   b. The separation is a quit if the discharge is because of the resignation and is less than 15 days before the effective date of the resignation. The reason for the resignation shall determine whether the worker had good cause for quitting or was compelled to quit.
2. If the discharge is not because of the resignation, the Department shall determine whether to assess a disquali-

fication based on the reason for discharge, in accordance with Article 51 of this Chapter.

R6-3-50135.01. Quit or Discharge; Absence From Work

Except as provided in R6-3-50135.03 and R6-3-50135.04, when a separation occurs because of a worker's absence from work, and a discharge is not established:

1. The separation is a discharge if:
   a. The worker had a reason for the absence,
   b. The worker intended to return to work upon a certain occurrence, and
   c. The worker tried to return to work; or
2. The separation is a quit if:
   a. The worker did not intend to return to work, and
   b. Made no attempt to preserve the job.

R6-3-50135.02. Quit or Discharge; Volunteering for Layoff

When a worker's separation is the result of the worker volunteering for a layoff or furlough due to a reduction in the work force, the Department shall determine whether a disqualification is assessed based on whether the employer or the worker initiated the action.

1. The separation is a discharge for nondisqualifying reasons when the employer determines that a layoff is to occur and then asks if there are workers who will volunteer for the layoff or volunteer to accept the employer's retirement plan.
2. The separation is a voluntary leaving without good cause when a worker requests or volunteers for layoff status prior to any specific announcement by the employer and the employer acts upon the request, unless the worker establishes that the leaving was for a compelling personal reason.

R6-3-50135.03. Quit or Discharge; Leave of Absence

A. "Leave of absence" means an agreement between an employer and a worker in which the employer promises the worker that the worker may return to work on a particular date or when a reasonably foreseeable event occurs.
   1. A leave of absence agreement may be oral or written.
   2. A leave of absence may, but is not required to be, based on a collective bargaining agreement or a company policy.

B. An agreement in which an employer offers a worker only a preference for rehire is not a leave of absence.

C. If a worker does not return to work at the end of a leave of absence for a definite period, the worker's reason for not returning determines the type of separation.

D. If a worker who is on a leave of absence for a definite period asks to return to work prior to the end of the leave, and work is not available until the leave ends, the separation is for a compelling personal reason.

E. If the worker described in subsection (D) later fails to return to work when the leave period ends, and work is available, the Department shall determine that the worker separated as of the 1st working day after the leave expires and shall determine whether to assess a disqualification based on the worker's reason for not returning to work.

F. A separation is a layoff when a worker on a leave of absence tries to return to work at the end of a definite leave period, or following a foreseeable event, but the employer has no work for the worker.

G. When a worker on a leave of absence applies for benefits without 1st notifying the employer of the worker's availability for work, the worker's reason for not attempting to return determines the type of separation.

R6-3-50135.04. Quit or Discharge; Investigative or Disciplinary Suspension

A. If an employer places a worker on a suspension without pay, pending the investigation of an alleged wrongdoing or as a disciplinary action, the employer-employee relationship is presumed to continue during the suspension period unless 1 of the following events occurs during the suspension period.
   1. The worker gives notice to the employer that the worker does not intend to return to work. When the reason for the leaving is because of the worker's objection to a disciplinary action, the worker's eligibility is determined in accordance with R6-3-50138.
   2. The employer notifies the worker that the job will not be available at the end of the suspension. The Department shall determine the reason for separation based on the reason the job is no longer available.
   3. The worker files a claim for benefits.

B. When a worker files a claim for benefits during the suspension period, the Department shall determine the type of separation based on the worker's reason for filing the claim and subsections (B)(1) through (B)(5).
   1. If the suspension is for an unreasonable period of time and the worker cannot reasonably be expected to remain ready to return to work at the end of the suspension, the suspension terminates the employer-employee relationship and the worker is discharged on the date the worker was suspended and for the reason the worker was suspended.
   2. If the suspension period is not unreasonable, the separation is a voluntary quit.
   3. For the purpose of this rule, a suspension of 16 or more of the employer's workdays is a suspension for an unreasonable period of time.
   4. If returning to work at the end of the suspension would create an intolerable work situation for the worker, pursuant to R6-3-50515, the separation is a voluntary leaving with good cause in connection with the work.
   5. If personal circumstances deemed compelling pursuant to this Article arise during the suspension, making it unreasonable for the worker to return to work, the worker leaves for compelling personal reasons not attributable to the employer.

R6-3-50135.05. Quit or Discharge; Corporate Officer

When a worker separates from a business in which the worker was a corporate officer, the Department shall use the following guidelines to determine whether to assess a disqualification.

1. A corporate officer who, on the officer's own accord or as a participant in a decision made by a majority of the officers, decides to sell or close the business or to otherwise separate from the corporation, leaves voluntarily. The reason for the sale or closure determines whether the corporate officer left for compelling personal reasons or had good cause for leaving.
2. If the corporation is sold because of declining income and increasing indebtedness, the corporate officer leaves voluntarily without good cause unless the corporation could not have continued.
3. If a corporate officer is forced out by a majority decision of the other officers, the corporate officer is discharged for reasons other than misconduct unless the termination was for reasons which constitute misconduct as defined in A.R.S. § 23-619.01 and Article 51 of this Chapter.

R6-3-50135.06. Quit or Discharge; Temporary Service Employer and Leasing Employer

A. If a worker separates from a temporary services employer or leasing employer, both as defined in A.R.S. § 23-614(G), after finishing work for the employer's client, the separation is either a quit or a layoff due to lack of work.
   1. If the worker has, in accordance with the temporary services or leasing employer's rules and procedures about which the worker knew or should have known, failed to report to the employer regarding subsequent work, the separation is a quit and the Department shall determine the worker's eligibility, in accordance with Article 50 of this Chapter.
   2. If the worker reported to the employer in the manner required and the employer did not immediately refer the worker to a new assignment, the separation is a layoff for lack of work.
   3. If the worker reported to the employer and was referred to a new assignment which the worker refused, the separation is either a voluntary leaving or a discharge and refusal of new employment as prescribed in R6-3-50315.

B. If a worker separates from the employer before finishing a contracted assignment, the separation is either a quit or a discharge based on the reason for the noncompletion.

R6-3-50305. ~~Military service (V.L.305)~~ Repealed

~~For purposes of administering A.R.S. § 23-775 but not for determining monetary eligibility, a separation from the military service is always considered as a discharge for reasons other than misconduct.~~

R6-3-50345. Retirement ~~Pension -- retirement (V.L.345)~~

A. Except as otherwise provided in subsection (B) and R6-3-50135.02, a ~~A~~ worker who chooses to retire from employment leaves voluntarily without good cause in connection with ~~his~~ the employment.

B. If a worker retires ~~Retirement~~ for health reasons, ~~of health~~ the Department shall determine whether the worker left for good cause in connection with the employment or for a compelling personal reason not attributable to the employer as prescribed in ~~should be considered under~~ R6-3-50235.

~~B. A worker who has no alternative to retiring or leaving to accept a pension, because of a requirement imposed by his employer or a collective bargaining agreement, is discharged for non-disqualifying reasons when:~~
   ~~1. The collective bargaining agreement under which he is employed requires his retirement at a prescribed age; or~~
   ~~2. A rule of his employer requires him to leave work upon reaching a specified retirement age; or~~
   ~~3. He is notified by his employer that he has no choice but to accept early retirement.~~

~~Note: See R6-3-54407(B) regarding non-charges resulting from a termination by retirement.~~

R6-3-50385. ~~Relations of alleged cause to leaving (V.L.385)~~ Repealed

~~A worker may not give his primary reason for leaving work when he files his claim. The incident or situation which actually caused the separation may have occurred some time prior to the time the claimant quits. It is important that questionable cases be fully explored to be certain that the alleged reason for leaving is the primary cause. Verification or rebuttal of the claimant's statement is important and should be obtained when possible.~~

R6-3-50440. ~~Termination of employment -- temporary cessation of work (V.L.440)~~ Repealed

~~A. General (V.L.440.05). A temporary separation from work or cessation of work does not necessarily sever the employer-employee relationship, even if the employee obtains work with another employer during the temporary separation.~~
   ~~1. The employer-employee relationship continues when there is a definite agreement between the employer and worker that the worker will resume his employment at a definite time or on the occurrence of a definitely foreseeable event.~~
   ~~2. In such cases, issues may arise from the initial or intervening employment that require adjudication. Other issues will arise later if the worker does not return to work for the employer with whom he had the continuing employer-employee relationship.~~

~~B. Temporary shutdown (V.L.440.1).~~
   ~~1. The employer-employee relationship continues when a worker is temporarily laid off because his employer suspends any or a part of his operation for a definite period of time provided:~~
      ~~a. The shutdown is of short duration; generally a 4-week period will be considered a maximum; and~~
      ~~b. The worker is given definite assurance of reemployment at his regular job or other suitable work when the employer resumes his operations; and~~
      ~~c. The employee has worked for the employer long enough to have established a firm attachment to the employment. The general pattern for the industry and occupation involved will serve as a guide to establish such attachment.~~
   ~~2. Workers unemployed due to a temporary shutdown who meet eligibility requirements are entitled to unemployment benefits during the period of the shutdown except where the temporary unemployment is due to "Customary suspension of operations" as described in A.R.S. § 23-775, paragraph (4).~~
   ~~3. A worker's failure to return to work at the specified time following a temporary shutdown will create additional issues for adjudication. his reason for not returning will determine the type of separation involved.~~

~~C. Leave of absence (V.L.440.2).~~
   ~~1. A leave of absence is an agreement between the employer and the employee that gives the employee definite assurance of returning to work on a specified date, or on the occurrence of a reasonably foreseeable event. It may be either oral or written and may be based upon a collective bargaining agreement or on company policy.~~
   ~~2. A leave of absence does not exist simply because 1 or both parties says it exists. An understanding which offers only a preference for rehire is not a leave of absence.~~
   ~~3. The separation of a worker who does not resume his employment at the expiration of leave which offers only a preference for rehire shall be adjudicated based on the reason for the absence. See R6-3-50135(G) for definite or indefinite leave.~~

~~D. Disciplinary suspension of definite duration (V.L.440.3).~~
   ~~1. When a worker is placed on disciplinary suspension of definite duration there is a presumption that the employer-employee relationship continues during the suspension period. Notice by the claimant that he does not intend to return to work or notification by the employer to the claimant that the job will not be available at the conclusion of the suspension would terminate the employer/employee relationship.~~
   ~~2. A separation during a disciplinary suspension period can result in a finding of voluntary leaving, discharge, or compelling personal reasons depending on the individual circumstances.~~

3. If the employer notifies the claimant that his employment is terminated during the suspension period it must be determined if the worker's unemployment is due to misconduct in connection with the work. The issue will be resolved by using the misconduct rules.
4. If a worker fails to return to work following a disciplinary suspension of definite duration his reason for not returning will determine the type of separation involved. Consideration must be given to the following:
   a. The duration of the suspension period;
   b. Whether the incident which brought about the disciplinary suspension would render the work to which the claimant would return unsuitable for him;
   c. Whether compelling personal circumstances have arisen during the period of the disciplinary suspension which would create undue hardship on the claimant if he were to return to his former employment.
5. If the duration of the suspension period was for such a long period of time that the worker could not reasonably be expected to hold himself in readiness to return to work at the end of the suspension, the adjudicator may determine that the suspension was in fact a complete termination of the employer-employee relationship, and the claimant's employment ended when he was placed on suspension. In such cases the separation will be adjudicated based on the reason for the suspension,
6. If compelling personal circumstances have arisen during the suspension that would create undue hardship on the claimant if he were to return to his former employment, or he has accepted other full time employment during the disciplinary suspension, he would leave for compelling personal reasons not attributable to the employer.
7. If returning to work at the end of a disciplinary suspension would create an intolerable work situation for the claimant, the adjudicator will hold that he left work voluntarily with good cause in connection with his work.

E. Corporate officer (V.L.440.6).
1. Generally when an individual worker purchases an interest in a going business or participates in providing capital for a business he becomes a part owner or corporate officer and assumes a responsible position in the firm.
2. If a corporate officer's employment is terminated because of reorganization, personal finances, or differences between the officers, a determination on his separation will be based upon the individual circumstances of the case. Depending upon such circumstances his separation may be a voluntary leaving, a discharge, or for compelling personal reasons.

F. Altered conditions of work (V.L.440.7).
1. When an individual leaves work because the conditions of employment are altered from those existing at the time of hire or in a prior job assignment a question arises as to whether there was an offer of a new job. In some instances the altered working conditions constitute new work. This includes cases such as a new contract of hire, transfer to a different department, a different type of work, or a different plant. For a discussion of cases involving "New Work" see R6-3-50315.
2. A separation from a "temporary help" firm upon the completion of an assignment is either a quit or a layoff due to lack of work.
   a. If the worker has, in accordance with the employer's rules and procedures which the worker knew or should have known, failed to report to the employer regarding subsequent work, the separation is a quitting of work to be adjudicated under the appropriate section of the Benefit Policy rules.
   b. If the worker reported to the employer in the manner required and the employer did not refer him to work immediately, the separation is a layoff for lack of work.

R6-3-50495. ~~Voluntary (V.L.495)~~ Repealed

A. The word voluntarily as used in a disqualification for leaving applies to a worker who terminates his employment when there is no compelling reason to do so.
B. The fact that a leaving is the worker's own intentional act does not necessarily mean that it is voluntary. Many circumstances personal to the claimant as well as those related to his work may compel him to leave. A claimant may quit because he has to, not because he wants to. Examples are:
   1. The claimant becomes disabled or ill to the extent he cannot perform his work.
   2. The work is injurious to his health or safety.
   3. He is unable to obtain transportation to get to and from work.
   4. Compelling legal, moral, or family obligations leaves him no suitable alternative to leaving.
C. Leaving work under such circumstances is the result of reasonable necessity, and is involuntary.

R6-3-50505. ~~Work, definition of (V.L.505)~~ (Repealed)

A. The definition of "work" or "employment" as used in a voluntary leaving determination refers to the employment relationship. Neither a worker's physical presence at the employer's establishment nor his continuous performance of the job duties is necessary to maintain an on-going employer-employee relationship. He may be on a leave of absence.
B. A disqualification should be applied only to a disqualifying separation from the claimant's most recent work, immediately preceding the unemployment for which he seeks benefits. This would include a separation from temporary or non-covered employment. See definition of last employment R6-3-5495.

ARTICLE 51. DISCHARGE MISCONDUCT BENEFIT POLICY

R6-3-51135. ~~Discharge or quit (Misconduct 135)~~ Repealed

A. General (Misconduct 135.05). For a general discussion of the discharge or quit provisions of these rules review R6-3-50135(A).
B. Discharge before effective date of resignation (Misconduct 135.25).
   1. When a claimant submits his resignation and is discharged by the employer before the effective date of the resignation, his separation shall be adjudicated in accordance with the applicable section of these rules, as well as the following:
   2. If the discharge is because of the resignation, and is 15 days or more before the effective date of the resignation the separation shall be a discharge for reasons other than work-connected misconduct.
   3. If the discharge is because of the resignation and is less than 15 days before the effective date of the resignation, the separation is a quitting of work to be adjudicated on the merits of the reason for the resignation.
   4. If the discharge is not because of the resignation, the separation shall be adjudicated on the basis of the reason for discharge. Leaving work before the effective date of the resignation submitted to avoid a discharge for misconduct shall be considered a discharge for work-connected misconduct, and a separation because of a resignation which leaves it up to the employer to determine the effective

date shall be a quitting of work and will be adjudicated on the merits of the reason for the resignation.

C. Leaving in anticipation of discharge (Misconduct 135.35)

1. Leaving work in anticipation of a discharge may be a discharge or a quit depending on the individual circumstances of the case. The intention of the employer and the claimant must be analyzed to determine who initiated the separation and who carried it out.
2. Adjudicators should bear in mind that a worker may voluntarily quit to avoid a discharge for misconduct because he feels that his employment record would appear in a more favorable light. Such a leaving is a discharge for misconduct and is to be adjudicated under the appropriate misconduct rule.
3. When a claimant leaves work in anticipation of a discharge for reasons other than misconduct, the decision should be based on his reason for leaving.
4. For a further discussion of leaving in anticipation of discharge adjudicators should review R6-3-50135(D).

R6-3-51345. Retirement Pension - retirement (Misconduct 345)

For a discussion of Pension - Retirement refer to Voluntary Leaving R6-3-50345.

A. A worker who has no alternative to retiring or leaving employment to accept a pension, because of a requirement imposed by the worker's employer or a collective bargaining agreement, is discharged for nondisqualifying reasons when:
   1. The collective bargaining agreement under which the worker is employed mandates the worker's retirement at a specified age,
   2. The employer has a rule mandating retirement at a specified age, or
   3. The employer notifies the worker that the worker has no choice but to accept retirement.

B. The Department shall determine the employer's chargeability for benefits in accordance with A.R.S. § 23-727 and A.A.C. R6-3-1708.

ARTICLE 52. ABLE AND AVAILABLE BENEFIT POLICY

R6-3-5240. Attendance at school or training course (Able and Available 40)

A. Department regulation R6-3-1805 provides in part: "An individual shall be presumed to be unavailable for work for any week of unemployment if such individual is a student; provided, however, that such presumption may be rebutted upon a showing to the satisfaction of the Department that such individual was, in fact, available for work..."
   1. Full-time attendance at an educational institution creates a presumption that a claimant is unavailable for work. A claimant who is attending, or during the most recent regular term has attended, an educational institution on a full-time basis, is considered a "student" and presumed unavailable for work. This presumption may be rebutted if the claimant has not, in order to attend school, left suitable full-time work, refused suitable full-time work, or reduced his hours to part-time work and has established a sufficient pattern of concurrent, full-time work and full-time school attendance during the 9 months preceding his now or additional claim to show that school attendance will not in itself interrupt full-time employment.
   2. A full-time student can remove the presumption that he is not available for work only by having established a definite pattern of regular, full-time work during regular school terms and vacation periods, showing that school attendance will not in itself interrupt full-time employment. This does not apply to individuals who only attend night school, or to individuals who have a history of full-time employment during hours other than the hours they are attending, or during the most recent regular term have attended, classes at an educational institution. Their availability should be tested by the same criteria applied to an individual who is attending school on a part-time basis.
   3. A claimant who could not have established such a pattern because of active military service may be considered available for work provided:
      a. He conducts an active and realistic work search, and
      b. He can establish that he can and is willing to either change class hours or drop classes to accept suitable full-time work, or
      c. The Department determines that there is a substantial labor market for full-time work in his skills at other than his class hours.
   4. A claimant considered a student by virtue of having attended school during the most recent regular term may remove the student status by a substantial showing that he will not return to school during the current or next regular term. A substantial showing is more than just a statement that the claimant does not intend to return to school. The adjudicator shall examine the claimant's search for work, personal circumstances, and such other factors that might indicate his true intentions, and shall obtain a sworn statement from the claimant on his intentions relative to returning to school. When the adjudicator deems it appropriate, he shall include in the sworn statement a paragraph that the claimant understands that the law provides both civil and criminal penalties for misstatements made to obtain benefits.
   5. Part-time school attendance does not necessarily affect a claimant's availability for work, if it is shown that the schooling is only incidental to full-time employment and there is a reasonable expectancy that he may obtain full-time work for which he is qualified during the hours he is free to accept such work. Whether the claimant could or would, if necessary, change his school hours to accept full-time work; whether he has invested a substantial amount in tuition, fees, or in special equipment; or whether he will lose credit if he leaves before the completion of the course are important factors in determining his availability.
   6. A claimant who leaves full-time work to enroll for part-time schooling renders himself unavailable for work during the period he is attending school because he has shown schooling is not incidental to full-time employment.

B. Attendance at approved training (Able and Available 40.1). A.R.S. § 23-771.01 of the Employment Security Law of Arizona provides in part:

"Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week which begins on or after January 2, 1972, because he is in training with the approval of the commission, nor because of the application to any such week of training of any provision of this chapter relating to availability for work, active search for work, or refusal to apply for or accept work;...

Department regulation R6-3-1809 provides in part:

... Benefits ... may be paid to an otherwise eligible individual while he is attending approved training only if the training facility states in writing with respect to each week that the individual is enrolled in and satisfactorily pursuing the course of instruction approved for him ..."

~~1. The above quoted references provide that a claimant who is satisfactorily pursuing a course of approved training is not subject to a determination of ineligibility because of any reason of availability or work search, or disqualification for refusal of work. Such claimant, if otherwise eligible, will be paid benefits based upon the certification of the training facility that he is enrolled in and satisfactorily pursuing the approved course of instruction.~~

~~2. Entitlement to benefits will continue during any temporary absence from or cessation of training provided the claimant meets the requirements of the training facility and the facility continues to certify his eligibility during such periods.~~

~~3. The claimant does not meet the requirements of Department regulation R6-3-1809 and is ineligible for benefits for any week the training facility certifies that the claimant is not satisfactorily pursuing the approved course of instruction.~~

R6-3-5240. Attendance at School or Training Course

A. In this rule, "full-time student" means a person who:
   1. Satisfies the criteria for being a full-time student, as established by the school the student is attending; or
   2. Is a part-time student at 2 different schools if the number of the student's combined hours meets at least 1 school's definition of full-time student.

B. Except as otherwise provided in A.R.S. § 23-771.01 and A.A.C. R6-3-1809, a claimant who is or was a full-time student during the most recent regular school term is presumed unavailable for work.
   1. A claimant who is currently attending school may remove the presumption of unavailability through 1 of the methods described in this subsection.
      a. The claimant shows a pattern of concurrent, full-time work and full-time school attendance for the 9 month period before the claimant files an initial claim for unemployment insurance, and the claimant has not, in order to attend school or a training course:
         i. Left suitable full-time work,
         ii. Refused suitable full-time work, or
         iii. Reduced the hours of work to part-time;
      b. The claimant, who cannot establish a 9-month pattern of concurrent full-time work and full-time school attendance because the claimant was engaged in active military service or other similar service for the United States during that period shows that the claimant:
         i. Is conducting a work search as prescribed in R6-3-52160, and
         ii. Is willing to change class hours or drop classes to accept suitable full-time work, or
         iii. Is able to work full time during hours other than the class hours.
      c. The claimant shows that the claimant attends classes only at night and is experienced at and seeking work readily available during daytime hours.
   2. A claimant who is not currently attending school, but who attended school as a full-time student during the most recent regular term, may remove the presumption of unavailability if the claimant:
      a. Graduated or completed the course,
      b. Discontinued school prior to the end of the term, or
      c. Does not intend to return for the next regular term.

C. A claimant attending school as a part-time student is presumed available for work when the claimant establishes that:
   1. Schooling is incidental to full-time employment,
   2. The claimant did not leave full-time work to enroll as a part-time student, and
   3. There is full-time work available during hours other than the time when the claimant attends classes, or
   4. The claimant will change the hours of school attendance or drop classes in order to accept full-time work.

D. A claimant attending a training course of less than 4 weeks' duration is eligible for benefits if:
   1. The course is sponsored by an employer who will employ the claimant upon the claimant's successful completion of the course, or
   2. The course provides a vocational evaluation or other service that assists the claimant in becoming reemployed.

ARTICLE 53. REFUSAL OF WORK BENEFIT POLICY

R6-3-5305. ~~General (Refusal of Work 5)~~

~~A. The statutory disqualification for refusal of work as prescribed in A.R.S. § 23-776, shall begin with the week in which the refusal occurred and shall continue for the duration of the claimant's unemployment and until he has earned wages in an amount equivalent to 8 times his weekly benefit amount otherwise payable.~~

~~B. Refusal of work for the purpose of benefit payments means a claimant's refusal to accept a referral to or an offer of suitable work.~~

~~C. In determining whether or not any work is suitable for an individual, the following factors detailed in Section 23-776 of the law shall be considered:~~
   ~~1. The degree of risk involved to health, safety, and morals;~~
   ~~2. Physical fitness;~~
   ~~3. Experience and prior training;~~
   ~~4. Length of unemployment and prospects of securing work in his customary occupation;~~
   ~~5. The distance of the available work from his residence;~~
   ~~6. Whether the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;~~
   ~~7. The protection of the worker's personal preference with respect to joining or not joining a union as a condition of being employed; and,~~
   ~~8. Whether the position offered is vacant due to a labor dispute.~~

~~D. In addition to the factors detailed in A.R.S. § 23-776 consideration must be given to the claimant's reason for refusing to accept a referral to work or an offer of work. If the offered work, was refused with good cause, a disqualification shall not be assessed, even though such work was otherwise suitable.~~

R6-3-5305. General; Definitions

A. As used in A.R.S. § 23-776(A), "when so directed by the employment office or the department" means that an employment office, as defined in A.R.S. § 23-616, or another placement service within the Department, has provided a referral to a job opening.

B. Except as provided in subsection (C)(2) and R6-3-53335, the offer of work shall be an offer from a new employer.

C. The Department shall not disqualify a claimant for a refusal of work even though the offered work was suitable if either condition listed in this subsection exists.
   1. The claimant had good cause for the refusal. In this subsection, good cause means personal circumstances beyond the claimant's reasonable control and includes the following:
      a. The claimant had a reasonable prospect of other work,

b. The claimant was ill, or
c. The claimant lacked transportation or child care.

2. A continuing employer-employee relationship exists between the claimant and an employer who maintains a temporary or on-call roster of workers, and the work offered by this employer is for a period of 2 days or less. The Department shall determine the claimant's eligibility for benefits for the week in which the work was offered in accordance with R6-3-5205(7). Examples of employment in which a continuing employer-employee relationship exists are substitute teachers or workers registered with a temporary services agency.

D. In subsection (C)(1)(a), a reasonable prospect of other work includes:
1. A definite offer and acceptance of a job to begin at a definite time,
2. A definite promise of a job although the starting date is an estimate by the employer, or
3. The knowledge of a Department representative that jobs will soon be available in the claimant's occupation.

R6-3-5340. ~~Approved training (Refusal of Work 40)~~ Repealed

~~A claimant who is attending and satisfactorily pursuing a training course approved by the Department is not subject to disqualification for refusal of work.~~

ARTICLE 54. MISCELLANEOUS BENEFIT POLICY

R6-3-5440. ~~Approved training (Miscellaneous 40)~~ Repealed

~~A. The Employment Security Law of Arizona provides for the payment of Unemployment Insurance benefits to otherwise eligible claimants who are in training with the approval of the Department.~~

~~B. A claimant who is satisfactorily pursuing a training course approved by the Department is not subject to a determination of ineligibility because of any reason of availability or work search, or disqualification for refusal of work. However, benefits may be paid to an otherwise eligible claimant while he is attending approved training only if the training facility states in writing, with respect to each week that the claimant is enrolled in and satisfactorily pursuing the course of instruction approved for him.~~

~~C. Approved training under A.R.S. § 23-771.01 is not limited to vocational training, but may include academic courses which must be taken in conjunction with occupational training. Before approval of a course of training, the claimant's vocational objective must be realistically and clearly defined, and must be attainable within a 52-week period.~~

~~D. If the period of training will extend beyond the duration of eligibility for unemployment insurance, the claimant must make a showing that training can be supported by some means after benefits are exhausted. No individual will be approved for training unless there is a reasonable expectation that the training program will be completed, and the vocational objective attained.~~

R6-3-5495. Disqualification; Definition of ~~Interpretation of work, as~~ Last Employment

~~For the purposes of A.R.S. § 23-775 the word "work" is interpreted as being the claimant's last employment immediately prior to filing the initial claim.~~

A. The Department shall determine whether to disqualify a claimant as prescribed in A.R.S. § 23-775(1) and (2) based on the reason for separation from the claimant's last employment when the claimant:
1. Initiates a benefit year;
2. After a period of intervening employment during the benefit year, files a request to reopen the claim; or
3. During a continuous period of filing, is employed and later separates from the employment.

B. In this Section, ~~The term~~ "last employment" means the claimant's ~~is defined as follows 1.The~~ most recent work:
1. Lasting 2 ~~of two~~ consecutive work days or more during which the claimant ~~he~~ worked the normal, customary full-time hours; ~~or~~
2. Lasting 2 ~~Two~~ days or more in the same calendar week during which the claimant ~~he~~ worked the normal, customary full-time hours; ~~or~~
~~3. A job from which he separated prior to its termination; or~~
3.4. Occurring during a calendar week ~~The most recent work~~ in which the claimant ~~has~~ earned wages ~~in a calendar week~~ equal to or exceeding the claimant's ~~in excess of his~~ weekly benefit amount;. or
4. Regardless of whether the claimant performed services or met the requirements of subsection (B)(1) through (3), which the claimant voluntarily left or from which the claimant was discharged.

ARTICLE 56. LABOR DISPUTE BENEFIT POLICY

R6-3-5601. Definitions and Explanation of Terms

The following definitions and explanation of terms apply to A.R.S. § 23-777 and Article 56 of this Chapter:
1. "Class" means a number of grades of workers, joined together for a common purpose.
2. "Directly interested in," when used in reference to a labor dispute, means that an employee is a member of a bargaining unit in which the terms or conditions of the employee's work will be directly affected by the outcome of a dispute.
   a. An employee may be directly interested in the labor dispute even though the employee is not a member of a striking union.
   b. An employee may be directly interested in a dispute even though the employee offered to continue working, or voted against or otherwise opposed the labor dispute.
   c. An employee is not directly interested in a dispute if the employee was not in the bargaining unit involved in the labor dispute but may benefit from the labor dispute because the employer's practice is to bring the employment status of all the employees into line with a settlement reached with any particular group of employees.
3. "Establishment" means more than a factory or other business premises and may include combinations or portions of factories or other premises. An establishment is each separate project of an employing unit if the project is a separate activity for the purpose of employment.
4. "Financing," when used in reference to a labor dispute, means that an employee is contributing money to enable workers to strike. Mere payment of union dues is not financing a labor dispute. If all or a portion of the employee's union dues are used to pay strike benefits, or to, in some other way, support the employee's union or another union involved in a labor dispute at the establishment at which the employee is or was last employed, the employee is financing a labor dispute.
5. "Grade" means a particular classification within an occupation, such as apprentice or journeyman.
6. "Labor dispute" means any controversy between employees and their employer over terms, tenure, or conditions of employment, or the association or representation of

employees in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. A labor dispute may exist without a union or a collective bargaining agreement. A strike or a lockout is a form of labor dispute.

7. "Lockout" means that an employer is withholding employment from a group of employees to obtain the employees' acceptance of the employer's terms. A lockout does not require the inclusion of all employees in a particular grade or class. A lockout exists when all the following conditions are present:
   a. The employer demands some concession from the employees,
   b. The employer withholds employment in order to gain the concession, and
   c. The employer intends to resume operations with the same employees when the concession is gained.
8. "Member of a bargaining unit" means any employee or group of employees, whether or not the employees belong to a union or other trade organization, who are members of a grade or class of employees represented by a bargaining unit that engages in bargaining on wages or other conditions of work.
9. "Participating in," when used in reference to a labor dispute at an establishment at which an employee is or was last employed, means that the employee has taken definite action such as stopping work, walking out, striking, picketing, or otherwise lending tangible aid to the worker group directly involved. Membership in a labor organization or union involved in a labor dispute is not participating in the dispute in the absence of other actions.
   a. An employee participates in a dispute if the employee refuses to cross a picket line at an establishment at which the employee is or was last employed, regardless of whether the employee is a member of the picketing union, if:
      i. The employee's job was open and work was available so the employee could have worked had the employee crossed the picket line; and
      ii. The employee's refusal to cross was voluntary. The employee's refusal is not voluntary if the employee risked physical violence by crossing the picket line.
   b. If the reason for the employee's failure to cross a picket line is respect for the strikers' cause, the employee is participating in the dispute.
10. "Strike" means that employees have stopped working because the employees have not reached an agreement with their employer on terms or conditions for continued employment, or the employer has refused the employees' demands for changes in the terms or conditions of employment. A strike exists when all the following conditions are present:
    a. The employees have demanded an agreement with the employer or some concession from the employer,
    b. The employees stop working in order to win the concession, and
    c. The employees intend to return to work when the agreement with the employer is reached or the concession is won.

R6-3-5602. Labor Dispute Notice

A. Notice by Employer
An employer involved in a labor dispute, strike, or lockout shall, upon request by the Department, provide the following information:
1. The address of each location affected by the dispute, the date the dispute began, and whether strikers have formed a picket line at each location;
2. The name, address, and business agent of any labor organization involved in the dispute, and the date a contract or agreement with the organization expired;
3. The issues involved in the dispute and the grade or class of employees who:
   a. Have left work because of the dispute;
   b. Are not a part of the dispute but are unemployed as a result of the dispute; and
   c. Are continuing to work; and
4. The name, social security number, and type of work performed by each employee who is unemployed due to the dispute.

B. Notice by Labor Organization
A labor organization involved in the dispute shall, upon request by the Department, provide the following information:
1. A description of the class of workers represented by the labor organization;
2. A summary of the matters in dispute;
3. Whether the labor organization has established a picket line;
4. Whether the members are required to do picket duty; and
5. Whether the members are paid while on strike.

R6-3-5603. Eligibility During a Labor Dispute

A. When a worker's unemployment results from action taken in anticipation of the labor dispute but occurring before the dispute starts, the worker's unemployment is not due to the labor dispute. The start of a labor dispute does not change the reason for a worker's unemployment if the unemployment preceded the dispute.

B. When a labor dispute begins while a worker is on an approved absence from work, and the worker does not return to work at the end of the absence because of the labor dispute, the worker's unemployment is due to the labor dispute. An example of an approved absence is vacation, sick leave, or other similar reasons.

C. When a worker who is a member of a grade or class of workers participating in, financing, or directly interested in a labor dispute did not go out on strike with the other members, but subsequently became unemployed because the employer limits or stops work as the result of the strike, the worker is unemployed due to a labor dispute pursuant to A.R.S. § 23-777.

D. When an employer can no longer provide work to a worker who is not participating in, financing, or directly interested in a labor dispute because of the absence of other workers who are on strike, the worker is unemployed due to a lack of work as a result of the labor dispute. The Department shall not charge the employer for any benefits paid to the worker while the worker's unemployment is a result of the labor dispute.

R6-3-5604. Termination of the Labor Dispute Disqualification

A. Discharge During Dispute
1. When, during an ongoing labor dispute, the employer discharges a worker who is unemployed due to a labor dispute, the Department shall not end the labor dispute disqualification until the employer establishes that the employer took positive and affirmative action to sever the employer-employee relationship, or the worker establishes that the worker:
   a. Has been permanently replaced,
   b. Abandoned the strike or dispute, and
   c. Unconditionally offered to return to work.

2. Positive and affirmative action by the employer to sever the employer-employee relationship includes:
   a. Resumption of operations,
   b. Permanent replacement of the discharged worker;
   c. Discontinuance of company benefits,
   d. Transfer of the employer's location, or
   e. Sale of the business.
3. Notwithstanding subsection (A)(1), the Department shall end the labor dispute disqualification and shall determine the worker's eligibility for benefits in accordance with the provisions of A.R.S. § 23-775(2) and Article 51 of this Chapter when the employer severs the employer-employee relationship because the worker:
   a. Participates in a strike in violation of a no-strike clause in a collective bargaining agreement; or
   b. Commits violence or unlawful conduct during picketing activities on, adjacent to, or directed at the employer's premises, property, operations, or personnel.

B. Quit During Dispute
The Department shall end the labor dispute disqualification if the Department determines the worker quit employment with a labor-dispute employer and does not intend to return to work at the end of the dispute.

C. New Employment During the Dispute
The Department shall end a labor dispute disqualification when the worker involved in an ongoing dispute has had new employment that began after the start of the labor dispute and the worker establishes the following:
1. The worker accepted the employment in good faith. Good faith means that the worker, in accepting the new work, intended to continue in the job and not return to the former employer at the end of the labor dispute.
2. The worker was employed by the new employer for at least 8 weeks, and in each week the worker earned an amount equal to or exceeding the worker's weekly benefit amount. One or more periods of employment, not necessarily consecutive, with 1 or more employers meets the duration test if the total duration is at least 8 weeks.

D. Termination of Dispute
A labor dispute no longer exists at the time the disputants agree it has ended and are willing to resume operations and return to work.
1. If there is no agreement as to the date a dispute has ended, the Department shall establish an ending date from the dates of the following events:
   a. The return to normal business operations,
   b. The end of bargaining meetings, and
   c. The striking unions' notice of a desire to return to work.
2. When a labor dispute ends, the worker is no longer directly interested in, financing, or participating in a labor dispute. The labor-dispute disqualification ends with the last week in which the labor-dispute disqualification is applicable for any portion of a day within the employer's regular work week.

E. Employer's Chargeability
The Department shall determine chargeability for the claimant's base-period employers during and upon termination of the dispute as prescribed in R6-3-1708(D).

R6-3-5605. ~~General (Labor Dispute 5)~~ Repealed
~~The conditions under which payment of benefits may or may not be made when unemployment is due to a labor dispute are specified in A.R.S. § 23-777. The policy contained in Article 56 of these rules was developed to assist in administering this statute.~~

R6-3-5635. ~~At the factory, establishment, or other premises (Labor Dispute 35)~~ Repealed
~~A. General (Labor Dispute 35.05)~~
~~1. Definitions.~~
~~a. "Factory" is defined as an industrial plant.~~
~~b. "Establishment" has been interpreted by the courts to have a broader meaning than factory or other premises, and may include combinations or portions of factories or other premises.~~
~~c. "Other premises" is identified as any other location of work activity of the employing unit.~~
~~2. To avoid confusion, the term "establishment" shall hereinafter be used and shall mean "factory", "establishment", or "other premises" as the case may be.~~
~~B. Separate branch or department (Labor Dispute 35.15)~~
~~1. The term "establishment" shall be identified as follows:~~
~~a. Each separate project of an employing unit shall be considered a separate "establishment" if the project is a separate activity insofar as the employees are concerned for the purpose of employment.~~
~~2. In determining which activities of an employing unit shall constitute a separate project and consequently a separate "establishment", the following factors shall be considered:~~
~~a. Whether the employees for each project were hired for that project and are to be terminated upon reduction in force on its completion;~~
~~b. Whether employees of an employing unit having different projects of activity worked primarily on 1 project rather than interchangeably on other projects;~~
~~c. Whether separate production or work schedules were followed;~~
~~d. Whether accounting procedures were such that contracts were bid or pricing was established for each project on the basis of separate cost accounting, separate tax computations, separate payrolls, etc.~~
~~3. An employing unit may have separate "establishments" at the same location. (Beaman, et al, vs. Safeway Stores Inc.)~~
~~4. 2 or more locations may constitute 1 "establishment", (e.g. A company may manufacture a product in a "factory" in Phoenix, but warehouse the product in "other premises" in Tempe. The Phoenix employees frequently worked interchangeably between the 2 locations and pricing of the Phoenix company products includes its warehousing costs incurred at the Tempe premises. Consequently, if a labor dispute arose at either location it would exist at the Phoenix company's "establishment" which includes both the Phoenix and Tempe locations.)~~
~~5. Each employing unit engaged in work activity at a particular location or project shall be considered a separate "establishment".~~

R6-3-56125. ~~Determination of existence (Labor Dispute 125)~~ Repealed
~~A. General (Labor Dispute 125.05)~~
~~1. Definition of a labor dispute.~~
~~a. The American statutory definition of a labor dispute has generally been that it includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relationship of employer and employee.~~

b. A labor dispute shall be said to exist when 1 party takes some positive and affirmative actions to persuade or coerce the other party into acquiescence with its position; at this point unemployment occurs or is an immediate probability. The filing of a grievance or reopening of contract negotiations standing alone does not meet the requirements of this definition. For the action to constitute a labor dispute it must be taken by the employer or substantial number of a group of employees who could be concerned.

c. A labor dispute may exist where there is neither a union nor a collective bargaining agreement, or when the dispute is between groups of workers, whether or not the workers are represented by organized labor. Strikes and lockouts are 2 types of action which constitutes a labor dispute.

2. Definition of a strike.

a. A strike occurs when individuals cease work because the employer refuses conditions demanded of him. A strike exists when all of the following conditions are present:

i. A suspended employer-employee relationship;

ii. A demand for some concession from the employer;

iii. A refusal of work in order to win such demand;

iv. An intention on the part of the employees to return to work when the concession is won.

3. Definition of a lockout.

a. A lockout is defined as withholding employment from a body of employees as a means of bringing them to accept the employer's terms. To be considered a lockout the employer's action must involve a substantial number of workmen, but not necessarily all of the particular grade or class. A lockout exists when all of the following conditions are present:

i. A suspended employer-employee relationship;

ii. A demand for some concession from the employees;

iii. A withholding of employment in order to gain such demand;

iv. An intention on the part of the employer to resume operations with the same employees when the concession is gained.

B. Violation of contract or agreement (Labor Dispute 125.6). When an employer has failed or refused to conform to the provisions of an agreement or contract between employer and employee, or a law of this state, or of the United States, pertaining to hours, wages, or other conditions of work, the worker shall not be disqualified.

R6-3-56130. Directly interested in (Labor Dispute 130) Repealed

A. Membership in the striking union is evidence, though not conclusive, of being "directly interested in" the labor dispute. If an individual's unemployment occurs during a labor dispute at the establishment where he is or was last employed and his wages, hours of work, or other conditions of employment are in dispute and could be affected by the outcome of the labor dispute, he is "directly interested in" the dispute even though he may have made an offer to the employer to continue working; voted against or otherwise opposed the labor dispute.

B. An individual who was not in the bargaining group involved in the labor dispute, but who may benefit as a result of the labor dispute because the particular employer's practice is to bring the employment status of all his workers into fine with the settlement reached with any particular group of his employees, shall not be considered "directly interested in" the labor dispute. This situation is distinguished from Brobston, et al. v. ESC and Kennecott Copper Corporation, Ray Mines Division (385 P 2nd 239), wherein the court held wages, hours, or conditions of work will be affected favorably or adversely by the outcome of the dispute. (Refer to Case 2 under R6-3-56125(A) of the Sample Case Section of the Benefit Policy Manual.)

R6-3-56175. Employment subsequent to dispute or work stoppage (Labor Dispute 175) Repealed

A. A worker separated from his employment due to a labor dispute, who has had employment subsequent thereto, shall thereafter be relieved of the labor dispute disqualification provided the new employment:

1. Was accepted in good faith, by which is meant, among other requirements, that the employee is accepting the new work intended to continue in the job and not return to his former employer at the end of the labor dispute, and

2. Was for a duration of not less than 8 weeks, and in each of these weeks he had earnings equal to or exceeding his weekly benefit amount.

B. 1 or more periods of employment, not necessarily consecutive, with 1 or more employers will meet the duration test provided the total duration was at least 8 weeks.

C. The requirement that bona fide intervening employment must conform to the 2 factors shown above is to ensure that only claimants disqualified due to the labor dispute, whose unemployment after the intervening employment does not continue to be due to the labor dispute, shall receive benefits.

D. Both requirements must be met before a claimant can be relieved of the labor dispute disqualification after having subsequent employment. If the claimant upon accepting the intervening employment intended to return to his former employer, the duration of the subsequent employment and the amount of earnings from such employment is immaterial and the labor dispute disqualification remains in effect.

R6-3-56205. Financing and participating (Labor Dispute 205) Repealed

A. General (Labor Dispute 205.05). For an individual to participate in the labor dispute which exists at the establishment at which he is or was last employed, he must take definite action such as stopping work, walking out, striking, picketing, or otherwise lending tangible aid to the worker group directly involved.

B. Affiliation with organization (Labor Dispute 205.1). Generally, membership in a union involved in a labor dispute does not amount to participating in the dispute. (Refer to R6-3-56130 of these rules.)

C. Payment of union dues (Labor Dispute 205.15). Payment of union dues does not of itself constitute financing a labor dispute. However, if all or a portion of the individual's union dues is used to pay strike benefits, or to in some other way support his union or another union, involved in a labor dispute at the establishment at which he is or was last employed, the individual is financing a labor dispute.

D. Picketing or refusal to pass picket line (Labor Dispute 205.2).

1. Refusal or failure of an individual to cross a picket line at the establishment at which he is or was last employed, amounts to participating in the dispute, whether or not the individual is a member of the picketing union, provided:

a. The individual's job was open so he could have worked had he crossed the picket line; and

b. The refusal to cross was voluntary.

2. The burden rests upon the individual to show he did not cross the picket line because:

a. No work was available for him; or

b. Physical violence, or a threat of it was present and this was the reason for his refusal.

3. If the predominant reason for failure to cross a picket line is respect for the strikers cause, the individual is participating in the dispute.

4. When an individual fails or refuses to cross a picket line set up in connection with a labor dispute and it is found the labor dispute did not exist at the establishment where the individual is, or was last employed, a determination as to possible disqualification shall be made under A.R.S. 23-775, paragraph (1).

R6.3-56220. Grade or class of worker (Labor Dispute 220) Repealed

A. General (Labor Dispute 220.05)

1. The use of the words "a grade or class" offers an alternative and implies there is a difference in their meaning.

2. "Grade" is more restrictive than "class" which may include more than 1 "grade." "Grade" may be identified as a particular classification within an occupation, such as apprentice or journeyman.

3. "Class" may identify a number of grades of workers, joined together for some common purpose. Recognized bargaining practices normally establish a "class" of workers.

B. Membership in bargaining unit (Labor Dispute 220.1)

1. Any worker or group of workers, whether or not they belong to a union or other trade organization, who are members of a grade or class of workers represented by a bargaining unit that engages in bargaining on wages or other conditions of work are members of the bargaining unit.

2. Individuals who are members of a grade or class of workers represented by a bargaining unit at the premises where they were last employed, who did not go out on strike with the other members, but who subsequently became unemployed because the employer curtails or discontinues work as the result of the strike are unemployed due to a labor dispute. (Refer to cases (2), and (4) under R6-3-56125(A) of the Sample Case section of the Benefit Policy Manual.)

R6-3-56407. Chargeability (Labor Dispute 407) Repealed

General (Labor Dispute 407.05)

1. The charging or noncharging of employer's experience rating accounts in labor dispute case will be in conformance with Department regulations R6-3-1402, R6-3-1708, and A.R.S. §§ 23-727, 23-733, and 23-777.

2. It is sometimes difficult to determine if an individual's unemployment is due to a labor dispute or is due to some other reason. Although an individual's unemployment may have initially been due to a labor dispute, changing conditions may subsequently cause his unemployment to be due to another reason.

3. Charging or noncharging an employer's experience rating account may vary depending upon whether the unemployment is due to a labor dispute or some other reason, and the period of noncharging or charging may end when the reason for the individual's unemployment changes. Determining charges and noncharges in such situations will be made in accordance with the appropriate Benefit Policy rule, including the Labor Dispute Policy rules.

R6-3-56445. Termination of labor dispute (Labor Dispute 445) Repealed

A. General (Labor Dispute 445.05)

1. A labor dispute no longer exists at the time the disputants agree it has ended and they are willing to resume operations and return to work.

2. If there is no agreement as to the date a dispute has ended, evidence such as the employer's having returned to normal operations, discontinuing bargaining meetings, notice of desire to return to work by striking unions, etc., shall be examined in establishing an ending date. At this point, an individual worker is no longer directly interested in, financing, or participating in a labor dispute and the labor dispute disqualification is no longer applicable.

3. The period of the worker's disqualification ends with the last week in which the labor dispute disqualification is applicable for any portion of a day within the employer's regular work week. A worker may continue to be unemployed due to a labor dispute as provided by Department regulation R6-3-1708(F) with a resulting noncharge to the employer's experience rating account. The employer must supply information as required by Regulation R6-3-1708(F)(2).

B. Discharge or replacement of workers (Labor Dispute 445.2)

1. Certain actions by an employer during the course of a labor dispute may be recognized as a discharge from employment with a resultant severing of the employer-employee relationship. A worker by his action may sever the employer-employee relationship. (See R6-3-56175 of these rules.)

2. When an employer takes positive and affirmative action to discharge a worker, the unemployment ceases to be due to a labor dispute and should be recognized as due to another cause. However, discharge actions by employers during labor disputes must be carefully examined as they are often part of the strike strategy.

3. Positive action such as posting a notice or mailing a letter stating that certain employees are discharged should not of itself be considered as severing the employer-employee relationship. However, when coupled with other affirmative action it may constitute a discharge. Such other affirmative action could be:

a. Replacing the discharged employees, or
b. Eliminating employees' benefits, or
c. Resumption of production, or
d. Transfer of the employer's location, or
e. Sale of the business, or
f Correspondence or communication with the affected employees.

4. In order to remove the labor dispute disqualification, the striking worker must not only establish that he has been permanently replaced, but also that he has

a. Abandoned the strike or dispute and
b. Unconditionally offered to return to work.

5. If it is determined that the employer has, in fact, severed the employer-employee relationship, the termination shall be adjudicated by reference to the appropriate Benefit Policy rule and the following:

a. Participation in a strike in violation of a no-strike clause of a collective bargaining agreement is usually misconduct connected with the work.
b. Violence or unlawful conduct committed during a labor dispute, strike, or lockout or during picketing activities on, proximate to, or directed at the employer's premises, property, operations, or personnel is misconduct connected with the work.

6. A worker's unemployment subsequent to the termination of the labor dispute may be a continuing result of the labor dispute. The employer may have replaced the

worker during the labor dispute as a legitimate tactic or in response to the labor dispute without severing the employer- employee relationship. When a worker remains unemployed upon termination of the labor dispute and the employer supplies timely and sufficient information to show there is still an employer-employee relationship such as placement of the worker's name on the recall list, continuation of employee benefits (insurance, profit sharing, vacation and/or sick leave), or retention of seniority rights, the worker's unemployment continues to be a result of the labor dispute and any benefits paid shall not be charged to any employer's account. When the claimant's continued unemployment ceases to be a result of the labor dispute, chargeability will be redetermined.

R6-3-56456. Unemployment due to labor dispute (Labor Dispute 465) Repealed

A. General (Labor Dispute 465.05)
   1. Individuals who are members of a grade or class of workers directly interested in a labor dispute and represented by a union or bargaining group in a labor dispute negotiations, are unemployed due to a labor dispute which exists at the establishment where they were last employed when:
      a. They leave work at the time of the strike action due to the labor dispute; or
      b. They become unemployed because the employer begins shutting down the job because of the strike action.

B. Discharge or resignation (Labor Dispute 465.1)
   1. As in the case of a discharge action, a voluntary quit or resignation can have the effect of severing the employer-employee relationship and removing the labor dispute disqualification though the dispute continues.
   2. When a claimant alleges he has quit his employment with the labor dispute employer, and does not intend to return at the end of the labor dispute, he deputy shall examine the reason for the separation and determine if the labor dispute disqualification should be removed before making a determination on the reason for the separation.
   3. The claimant's statement that he has quit his job, standing alone, will generally not be sufficient proof that the employer-employee relationship is severed, as such will normally be considered as a self-serving statement. Corroborating evidence to show such quit is irrevocable or unequivocal should be supplied. The employer's statement regarding whether he considers the employer-employee relationship to have been terminated should be given considerable weight.

C. Lack of work (Labor Dispute 465.15)
   1. An employer may as the result of a labor dispute terminate the employment of claimants who were not participating in, financing, or directly interested in a labor dispute because he is unable to continue work at the job site where the claimant(s) were employed because of the absence of other workers who are on strike.
   2. In such cases the claimant's unemployment is due to a lack of work as a result of the labor dispute. (For an example, refer to Case (1), under R6-3-56465(C) of the Sample Case Section of the Benefit Policy Manual.)

R6-3-56470. Unemployment prior to labor dispute (Labor Dispute 470) Repealed

A. General (Labor Dispute 470.05)
   1. Unemployment resulting from action take in anticipation of a labor dispute, but occurring prior to the starting of the labor dispute, whether employer or worker action, shall not be considered as unemployment due to a labor dispute.
   2. The beginning date of the labor dispute should be clearly identified as described under R6-3-56125(A) and Case (3) under that Sample Case Section.
   3. An individual who becomes unemployed under conditions which severed the employer-employee relationship prior to the commencement of the labor dispute shall not have the reason for his unemployment changed if he has remained unemployed and a labor dispute occurs at the establishment where he last worked.

B. Absence (Labor Dispute 470.1)
   1. If the employer-employee relationship was not severed at the time the claimant last performed services prior to the labor dispute (i.e., vacation, sick leave, leave of absence, etc.). The labor dispute which commences later is said to occur at the establishment at which he was last employed as distinguished from at which he is last employed.
   2. The unemployment of the individual is due to the labor dispute if he does not return to work when he otherwise would have, had it not been for the labor dispute.